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ALEXANDER L. STEVAS,
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No. 82-825

# In the Supreme Court of the United States

OCTOBER TERM, 1982

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PETITIONER

*v.*

SHELL OIL COMPANY

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*ON WRIT OF CERTIORARI TO THE*
*UNITED STATES COURT OF APPEALS*
*FOR THE EIGHTH CIRCUIT*

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## JOINT APPENDIX

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**PETITION FOR WRIT OF CERTIORARI FILED**
**NOVEMBER 16, 1982**
**CERTIORARI GRANTED FEBRUARY 22, 1983**

# In the Supreme Court of the United States

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*v.*

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*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

## INDEX


| | Page |
|---|---|
| Relevant Docket Entries | |
| No. 81-1811 (8th Cir.) | 1 |
| No. 81-5020 (S.D. Ill.) | 4 |
| Consolidated Nos. 80-1202C(5) and 81-230C(5) (E.D. Mo.) | 6 |
| Transcript of Hearing (May 15, 1981) | 17 |
| First Interrogatories of Shell Oil Co. (Civil No. 81-203C(5) (E.D. Mo.) (March 9, 1981 | 47 |
| Application to Enforce Subpoena (Civil No. 81-5020, S.D. Ill.) (Feb. 4, 1981) | 57 |
| Affidavit of W. Ed Mansfield (Feb. 4, 1981) | 59 |
| Exhibit D—Notice of Charge (Oct. 26, 1979) | 62 |
| Exhibit E—Letter from W. Ed Mansfield (Oct. 26, 1979) | 64 |
| Exhibit F—First Request for Information (Oct. 26, 1979 | 66 |

| | Page |
|---|---|
| Exhibit G—Correspondence | 83 |
| Letter from Terrence W. Marlow (Nov. 30, 1979) | 83 |
| Letter from R.B. Rice (January 17, 1980) | 84 |
| Letter from Terrence W. Marlow (Jan. 23, 1980) | 85 |
| Letter from R.B. Rice (March 7, 1980) | 89 |
| Letter from W. Ed Mansfield (March 21, 1980) | 94 |
| Letter from Earnestine C. Thomas (April 11, 1980) | 103 |
| Letter from R.B. Rice (April 28, 1980) | 110 |
| Exhibit H—Subpoena (May 15, 1980) | 112 |
| Exhibit I—Proof of Service (May 15, 1980) | 136 |
| Exhibit J—Petition to Revoke or Modify Subpoena | 140 |
| Exhibit K—Determination on Petition (June 9, 1980) | 146 |
| Exhibit L—Appeal of Determination | 154 |
| Exhibit M—Determination on Appeal Petition (Aug. 19, 1980) | 164 |
| Complaint (Civil No. 80-1202C(5)) (Sept. 18, 1980) | 169 |
| Order allowing certiorari | 183 |

## RELEVANT DOCKET ENTRIES
## No. 81-1811
## EIGHTH CIRCUIT

| Date 1981 | Filings—Proceedings | Filed |
|---|---|---|
| Aug 3 | Docketed case | |
| Aug 3 | Certified copies notice of appeal; docket entries; Memorandum; Order rec'd from D.C. | (1) |
| Aug 3 | BRIEFING SCHEDULE: DR aplnt due 8/13/81, DR aplee due 8/24/81, DR to be filed by D.C. by 9/3/81, tr. due 9/2/81, brief aplnt due 9/14/81, brief aplee due 10/14/81. | |
| Aug. 10 | APPEARANCE for appellant. | (2) |
| Aug. 10 | APPEARANCE for appellant. | (3) |
| Aug 6 | LAW CLERK MEMO attached to screening report | |
| Aug. 21 | MOTION aplnts ext of time to file opening brief. | (4) |
| Aug. 24 | APPEARANCE for appellee. | (5) |
| Aug. 24 | To Settlement Conference (To T.G.) 8/24/81. | |
| Aug. 31 | ORDER: Aplnt's ("Shell") motion is granted in part in that aplnt may have to and incl. 9/28/81, in which to serve and file opening brief. | (6) |
| Sept. 8 | ORDER: Case is remanded to District Court for ruling on appellant's pending Motion for Clarification of District Court's memo. and order of June 30, 1981, in No. 80-1202-C(5). This Court retains jurisdiction pending remand. | (7) |
| Sept. 30 | DISTRICT COURT JUDGMENT rec'd: Judgment entered for EEOC in 80-1202C(5), Shell's action to quash the subpoena. Judgment entered for EEOC in 81-0230C(5), EEOC's action to enforce the subpoena | (8) |
| Oct. 14 | CERTIFIED COPIES *NOTICE OF APPEAL*; docket entries; Judgment; Order; Memorandum rec'd from District Court | (9) |
| Oct. 14 | TO SETTLEMENT CONFERENCE—Not suitable for conference. 10/27/81. | |
| Oct. 16 | MOTION aplnt. ext of time to file opening brief. | (10) |
| Oct. 26 | Shell Oil Company will proceed on a D/R. | |
| Oct. 26 | Rec d copy of aplnt's designation of record. | |
| Nov. 9 | ORDER: Appellant may have to and including November 24, 1981, in which to serve and file opening brief. | (11) |

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| Nov. 24 | *Brief Appellant* w/ser. 11/24 7 copies | (12) |
| Dec. 14 | BRIEFING SCHEDULE: Brief aplee/cr. aplnt due 12/24/81, reply brief aplnt/cr. aplee due 1/28/82, reply brief aplee/cr. aplnt due 2/11/82, with 2355. | |
| 11/16/81 | THREE copies D.R., ONE Vol. Transcript of Hearing. Retd to Dist. Ct. 8/4/82 | |
| Dec. 28 | Motion for extension of time to file brief of appellee. | (13) |
| *1982* | | |
| Jan. 12 | On request of counsel for appellees, appellees have thru 1/12/82 to file brief; appellant has thru 1/28/82 to file reply brief. | (14) |
| 10/26/81 | Certificate of pecuniary interest ... original..... | (15) |
| Jan 25 | *Brief Respondent* w/ser. 7 copies | (16) |
| Jan 25 | Received 3 copies of Supreme Ct. Dec. from appellee for the Court | |
| Jan 27 | To Screening 30 min. | |
| Jan. 28 | MOTION aplnt ext of time to file reply brief. | (17) |
| Feb. 9 | ORDER: Aplnt may have to and including 2/16/82 to file reply brf. | (18) |
| Feb 17 | Transferrred to March session. | (19) |
| Feb. 19 | *Reply Brf for Aplnt* | (19) |
| Mar. 11 | ARGUED AND SUBMITTED to Judges Ross, Gibson and McMillian. Martin D. Schneiderman for aplnt. Lorraine C. Davis, for aplees. REBUTTAL: By Mr. Schneiderman. RECORDED | |
| APR 28 | OPINION BY ROSS (PUBLISHED) (676 F.2d 322) | (20) |
| Apr 28 | JUDGMENT: CAUSE remanded to District Court for proceedings consistent with this Court's opinion. | (21) |
| May 12 | MOTION appellant for enlargement of time in which to file petition for reharing. (w/service) | (22) |
| May 12 | APPELLANT's BILL of costs—with service. | (23) |
| May 14 | ORDER: Appellant may have to & including May 27, 1982 in which to serve & file petition for rehearing. | (24) |
| May 24 | APPELLEES' OBJECTION to appellant's bill of costs—w/service. | (25) |
| May 27 | APPELLEE's PETITION for rehearing with suggestions for rehearing en banc. (w/service & statement) | (26) |

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| May 28 | ORDER: Court's order of May 14, 1982 should be amended to read "appellees", in lieu of "appellant", may have to & including May 27, 1982, etc. | (27) |
| July 20 | ORDER: Petition for rehearing en banc is denied with Judge Lay's dissent. (Published) Dissent Lay 689 F.2d 757 | (28) |
| July 20 | ORDER: Opinion filed 4/28/82 is modified with substitution of pages 7, 8, & 9, attached to order (PUBLISHED) | (29) |
| Aug. 4 | MANDATE ISSUED. | |
| Aug. 17 | ORDER: APPELLANT will recover the sum of $2,250.15 for costs for appellee. | (30) |
| Oct. 18 | LETTER from Clerk of Supreme Ct. advising that an extension of time to file petition for writ of certiorari has been granted by Mr. Justice Blackmun to and including Nov. 17, 11982. | (31) |
| Nov 22 | NOTICE OF FILING of Petition for Writ of Certiorari to the Supreme Ct as case no. 82-825 as of Nov. 16, 1982. | (32) |
| *1983* | | |
| Feb. 28 | ORDER of Supreme Court of U.S. granting certiorari in case no. 82-825, as of Feb. 22, 1983. | (33) |

# RELEVANT DOCKET ENTRIES
## CIVIL NO. 81-5020
## SOUTHERN DISTRICT OF ILLINOIS

| Date | NR | Proceedings 81-5020 |
|---|---|---|
| 1981 | | |
| 2/4 | | APPLICATION for Order to Show Cause Why a Subpoena Should Not Be Enforced by Pltf. with MEMORANDUM in Support and AFFIDAVIT of W. Ed Mansfield<br>J.S. No. 44<br>ORDER (WLB) to Show Cause. IT IS ORDERED that Respondents Shell Oil Company and Roger Rice appear on the 27th day of February, 1981, at 9:30, in the Court room, United States Courthouse, Alton, Illinois, and show cause why they should not be compelled to comply with the subpoena issued to them. IT IS FURTHER ORDERED that Shell Oil Company and Roger Rice be served with a copy of the show cause order, and the application upon which it was based, on or before the 9th day of February, 1981. IT IS FURTHER ORDERED that Shell Oil Company and Roger Rice must file and serve their answer to the application not later than the 20th day of February, 1981. DATED: February 4, 1981.<br>Service papers with application and order to show cause sent to USM this date for service upon the two named defts. |
| 2/9 | | Marshal's RETURN OF SERVICE on Roger Rice, Administrative Superintendent, Shell Oil Company, returned unexecuted. |
| 2/12 | | Marshal's RETURN OF SERVICE on Shell Oil Company by serving C. T. Corporation, c/o Bonnie Harmon, Clerk, on 2/6/81. |
| 2/20 | | MOTION to transfer (Shell) and proposed order, with BRIEF in Support |
| 2/27 | | ORDER (WLB)... IT IS HEREBY ORDERED, that the motion of Shell Oil to transfer be, and the same is hereby GRANTED; and it is further ORDERED that this civil action be, and the same is, hereby transferred to the U.S. District Court for the Eastern District of Missouri; and it is further ORDERED that the response of Shell Oil Company to the application of EEOC herein shall be due ten days after the date of this Order. DATED: 2/27/81. Copies to all parties. |

Case transferred to U.S. District Court for the Eastern District of Missouri this date (entire file, certified copy of transfer order, and certified copy of docket entries sent).

CASE CLOSED.

## RELEVANT DOCKET ENTRIES
## CONSOLIDATED CIVIL Nos. 80-1202C(5) AND 81-230C(5)
## EASTERN DISTRICT OF MISSOURI

| Date | NR. | Proceedings |
|---|---|---|
| 9/18/80 | | COMPLAINT, 8 Counts, Non Jury, summons issued 60 days on all defts fld. |
| 9/23/80 | | RETURN OF SUMMONS executed on W. Ed Mansfield, District Director, St. Louis dist. Office, USEEOC by serving Connie Wolf (sec) 9/22/80 |
| 9/26/80 | | RETURN OF SUMMONS executed on Robert D. Kingsland 9/23/80. 2 copies to atty. General cert. mail 9-19-80. |
| 10/2/80 | | RETURN OF SUMMONS executed on U.S, Equal Employment Opportunity Commission by cert. mail by serving D. Smith 9/24/80. |
| 10/2/80 | | RETURN OF SUMMONS executed on Eleanor Holmes Norton, Chairman, U.S. Equal Employment Opportunity Commission by cert. mail by serving J. Salcedo 9/23/80. fld. |
| 10/22/80 | | RETURN OF SUMMONS executed on Leroy Clark, General Counsel, U.S.E.E.O.C. 9/19/80. by certified mail. |
| 11/24/80 | | FIRST INTERROGS (17) to Deft. Equal Employment Opportunity Commission fld. by Pltff. Shell Oil Co. |
| 11/24/80 | | FIRST REQUEST To Inspect and Copy Documents pursuant to Federal Rule 34 fld. by Pltff. Shell Oil Co. |
| 12/2/80 | | ENTRY OF APPEARANCE—of Dianna B. Johnston for defts. fld. |
| 12/2/80 | | MOTION to Dismiss fld. by defts. w/Memorandum in support. |
| 12/4/80 | | MOTION for an enlargement of time in which to respond to deft's Motion to Dismiss. fld. by pltff. |
| 12/4/80 | | STIPULATION—that time within which pltff must respond to deft's Motion to Dismiss is enlarged from Friday, Dec. 5, 1980, until and including January 6, 1981. So ordered (JHM). |
| 12/29/80 | | MOTION for Protective Order w/memorandum of law in support and proposed Order fld. by defts. |

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| 1/5/81 | EXTENSION OF TIME—pltff granted thru 1/13/81 to file its response to defts' Motion for a protective order. (CSC) |
| ** | 1/7/81 Motion of 12/2/80 and file delivered to Judge Cahill. |
| ** | |
| 1/6/81 | OPPOSITION to defts' Motion to Dismiss fld. by Shell Oil Co. pltff. w/attachments. |
| 1/9/81 | SUPPLEMENTAL MEMORANDUM of Law in support of Deft's Motion to Dismiss fld. by defts. |
| 1/12/81 | STIPULATIONS—pltff. does not oppose defts' mtn for protective order staying discovery in case until ct. has ruled on defts' mtn. to Dismiss. In event that defts' mtn to dismiss is denied, defts agree to answer or object within 30 days of such denial. pltff's first interrogs filed Nov. 24, 1980. fld. by both parties. So Ordered (CSC). cc: attys. |
| 1/13/81 | EXTENSION OF TIME—pltff. requests an additional (10) days to and including 1/22/81 to file a response to deft's Supplemental Memorandum in Support of its Motion to Dismiss. So Ordered (CSC). fld. |
| 1/13/81 | MEMO FOR CLERK—Deft notifies the Court that it intends to respond by Feb. 6, 1981 to pltff's 1/6/81 opposition to deft's Mtn. to Dismiss. Pltff has been notified of deft's intention and does not oppose deft's intention to submit its response on or before 2/6/81/fld. by deft. |
| 1/22/81 | RESPONSE of Shell Oil Company to deft's supplemental memorandum of law in support of deft's Motion to Dismiss. fld. |
| 2/6/81 | DEFENDANT'S REPLY BRIEF—The Commission's Charge is Sufficient fld. |
| 3/6/81 | ORDER and MEMORANDUM (CSC) fld. Ordered that the motion to Dismiss of Deft. EEOC is DENIED. cc: attys. |
| 3/9/81 | MOTION for Consolidation w/memorandum in support and proposed order fld. by pltff. Shell Oil Co. |
| | 3/16/81 Motion of 3/9/81 and file delivered to Judge Cahill. |
| 3/16/81 | ORDER (HKW) Upon consideration of motion of pltf/Respondent, Shell Oil Company, for consolidation of Cause #81-230(1) with #80-1202C (5), ORDERED that said causes are consolidated. Cause #81-230C(1) is consolidated with prior-filed Cause #80-1202C (5) and for all purposes is assigned to the same docket as was the prior-filed action. cc: attys. |

3/16/81 CAUSE #81-230C (1) TRANSFERRED from Court #1, pursuant to above ORDER.

3/19/81 ORDER TO SHOW CAUSE (CSC) fld. Ordered that respondents Shell Oil Co. and Roger Rice appear on the 17th day of April, 1981, at 10:00 a.m. in the Courtroom of the Honorable Clyde S. Cahill, and show cause why they should not be compelled to comply with the subpoena issued to them. Further ordered that Shell Oil Co. and Roger Rice be served with a copy of the show cause order, on or before the 1st day of April, 1981. cc: attys.

4/1/81 MOTION to Strike defense w/suggestions in support of Motion of Applicant to strike defense fld. by applicant EEOC.

4/1/81 MOTION for Protective Order that discovery not be had w/memorandum in support. fld. by applicant EEOC.

4/3/81 MOTION For Continuance w/memo fld. by pltf.-respondent Shell Oil; REF._____

4/6/81 MEMO FOR CLERK—Shell Oil Co. is granted to 4/17/81 to respond to EEOC's Motion to Strkie [*sic*] and Motion for a protective order; SO ORDERED (CSC)

4/9/81 MEMORANDUM IN OPPOSITION TO RESPONDENT-PLTFF'S Motion for continuance. w/exhibit A. fld. by EEOC.

4/10/81 MOTION FOR RECONSIDERATION w/memorandum of law in support of motion for reconsideration w/attachment #1, fld. by deft. EEOC. w/proposed order.

4/10/81 MOTION of Shell Oil Company to enforce stipulation w/memorandum in support & proposed order fld. by Shell Oil Co.

4/10/81 MOTION for Protective Order w/memorandum in support & proposed order fld. by EEOC.

4/13/81 Motions of 4/1/81 and 4/3/81 delivered to Judge Cahill.

4/14/81 CAUSE #81-230C (5) Hearing Resetting—By order of ct, sua sponte, the hearing on the order to show cause in cause is removed from setting on Friday, April 17, 1981, and reset for FRIDAY, MAY 15, 1981, at 10:00 a.m. (CSC) fld. cc: attys.

4/14/81 EXTENSION OF TIME—Pltff, Shell Oil Co., is hereby granted up to and including April 24, 1981, to respond to defts' Motion for Protective Order and Motion to Reconsider. fld. (CSC) So Ordered.

4/17/81 OPPOSITION of Shell Oil Co. to Motion to strike defenses and Motion for Protective Order filed by Equal Employment Opportunity Commission in Civil Action No. 81-230C(5). fld.

4/21/81 Motions of 4/10/81 and file delivered to Judge Cahill.

4/23/81 OPPOSITION to Motion to Enforce Stipulation fld. by EEOC.

4/24/81 OPPOSITION of Shell Oil Co. to Motion for Reconsideration fld.

5/15/81 PARTIES PRESENT FOR HEARING ON ORDER TO SHOW CAUSE, DEFT'S EXHIBITS A THRU N ADMITTED INTO EVIDENCE, CAUSE ARGUED, HEARD AND TAKEN UNDER SUBMISSION.

5/15/81 SUPPL MEMORANDUM—On Disclosure To Outside Consultants, fld by Plff., Shell Oil

6/24/81 TRANSCRIPT—Of Hearing, fld by Court Report, located in case #81-230C(5)

6/30/81 ORDER & MEMORANDUM (CSC)—Fld., Ordered that the EEOC's Motion to Strike is DENIED. FURTHER ORDERED that the EEOC's Motion for Protective Order that discovery not be had is STAYED as to Shell's Interrogs #11-13, pending the filing of a certificate of privilege by the EEOC and DENIED as to Shell's Interrogs #1-10, 14-17, and Shell's First Request to Inspect and Copy Documents. FURTHER ORDERED that Shell's Motion for Continuance is DENIED AS MOOT. FURTHER ORDERED that the EEOC's Motion for reconsideration is GRANTED. FURTHER ORDERED that Shell's Motion to enforce the Stipulation is DENIED. FURTHER ORDERED that Defts' (EEOC, et al.) Motion for Protective Order is DENIED AS MOOT. cc: attys

7/20/81 MOTION—For Reconsideration and Clarification of Order of Court of June 30, 1981, W/Memorandum in Support, fld by the Deft., (ref_____)

7/28/81 CROSS-MOTION—For Clarification, W/Memorandum in Support and Proposed Order, fld by Plff., (ref_____)

7/29/81 NOTICE OF APPEAL fld. by pltff-deft Shell Oil Co. cc: attys. Judge Cahill. Dist Ct. & USCA8 fees pd. Copy of Notice of Appeal, Copy of Order & Memorandum filed 6/30/81 and 2 cert. Copies docket sheets delivered to USCA8 7/30/81. (80-1202C (5) consolidated with 81-230C (5).

7/31/81 Motion of 7/20/81 and file delivered to Judge Cahill.

8/10/81 CAUSE #81-230C (5) REPLY to Cross Motion for Clarification fld. by EEOC.

8/24/81 SUPPLEMENTAL MEMORANDUM of Shell Oil Co. in Opposition to EEOC's Motion to Dismiss, first Motion for Reconsideration, Motion to Strike defenses, and Second Motion for Reconsideration and clarafication [*Sic*] w/attachments fld.

9/9/81 ORDER—USCA. fld. This case is remanded to the District Court for the Limited purpose of having that Court rule on appellant's pending Motion for Clarification of the District Court's memorandum and order of June 30, 1981, in No. 80-1202C(5). This court retains jurisdiction pending remand. cc: attys.

9/17/81 REPLY of EEOC to supplemental memorandum of Shell Oil Co. in Opposition to EEOC's Motion to Dismiss, First Motion for Reconsideration, Motion to strike defenses, and Second Motion for Reconsideration and clarification fld.

9/22/81 JUDGMENT (CSC) fld. Ordered, Adjudged, and Decreed that judgment is entered for the EEOC in civil action No. 80-1202-C (5), Shell's action to quash the subpoena. Ordered, Adjudged, and Decreed that judgment is entered for the EEOC in civil action No. 81-230C (5), EEOC's action to enforce the subpoena. cc: attys.

9/22/81 ORDER AND MEMORANDUM (CSC) fld. Ordered that civil action No. 80-1202C (5), Shell's action to quash the subpoena, is DISMISSED. Further ORDERED that Shell shall comply with the subpoena issued it in connection with the investigation of the charge by allowing EEOC reps access to the subpoenaed documents and info to commencing no later than October 23, 1981, and continuing until production is completed. Ordered that EEOC may not turn over any of the info obtained via the subpoena to outside consultants. Further Ordered that EEOC's mtns for protective order that discovery not be had and to strike defenses are DENIED. cc: attys.

10/9/81 NOTICE OF APPEAL fld. by pltff-appellant. cc: attys, Judge Cahill. Dist. Ct. & USCA fees not required—USCA retains jurisdiction. Cert. Copy Notice of Appeal, copy of Judgment entered 9/22/81 and Order of 9/22/81, and 2 cert. copies docket sheets delivered to USCA8. 10/13/81.

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| 10/9/81 | MOTION for stay of enforcement Order pending Appeal and for approval of supersedeas Bond, w/memorandum of Shell Oil Co. in support & proposed Order. fld. by Shell Oil Co. |
| 10/9/81 | APPEAL BOND—LODGED. by Shell Oil Co. |
| 10/13/81 | PUBLISHED with West Publishing Co., Bureau of National Affairs and Lexis Opinion Collection Dept.—Order & Memorandum filed 6/30/81 and Judgment, Order and Memorandum filed 9/22/81. |
| 10/19/81 | MEMORANDUM OF POINTS AND AUTHORITIES in Opposition to Motion for Stay of enforcement pending Appeal fld. by EEOC. |
| " " | 10/14/81 Motions of 10/9/81 and 10/13/81 and file delivered to Judge Cahill. |
| 10/26/81 | DESIGNATION OF CLERK'S RECORD AND STATEMENT OF ISSUES ON APPEAL fld. by appellant Shell Oil Co. |
| 10/30/81 | REPLY MEMORANDUM of Shell Oil Co. in support of Motion for stay of enforcement Order pending appeal w/attachments fld. |
| 11/9/81 | ORDER AND MEMORANDUM (CSC) fld. ORDERED that Shell's motion for stay of the enforcement order of September 22, 1981, pending appeal and for approval of a supersedes bond in the sum of $250.00 is GRANTED. cc: attys. |
| 11/9/81 | COUNTER DESIGNATION OF CLERK's RECORD ON APPEAL fld. by EEOC, (appellee) |
| 11/16/81 | DELIVERED TO USCA8.—One certified & 2 copies of designated record, 1 vol, transcript of hearing of 5/15/81. |
| 11/24/81 | MOTION for permission to file notice of appeal out of time fld. by EEOC. Notice of Appeal lodged. LEAVE to file Notice of Appeal Granted (CSC) 12/3/81. |
| 12/3/81 | **Motion of 11/24/81 and file delivered to Judge Cahill.** |
| 12/3/81 | **NOTICE OF APPEAL fld. by Pltff EEOC. cc: attys. U.S. Dist. Court & USCA fees not required.** |
| 12/9/81 | **DELIVERED TO USCA—Cert. copy Notice of Appeal, Copy of Order and Memorandum fld. 9/22/81 and 2 cert. copies docket sheets.** |
| 3/2/81 | **CAUSE TRANSFERRED FROM US DISTRICT COURT—SOUTHERN DISTRICT OF ILLINOIS (CAUSE #81-5020) *WITH ALL RELATED PAPERS*:** **Cause Filed on 2/4/81:** |

APPLICATION for Order to Show Cause Why a Subpoena Should Not Be Enforced by Pltf, with MEMO in Support thereof & AFFIDAVIT

On 2/27/81—ORDER (WLB) Fld. HEREBY ORDERED that on motion of Shell Oil Co. to Transfer is GRANTED. Further Ordered that this cause be transferred to Eastern District of Missouri and *Further Ordered that the response of Shell Oil Company to the application of EEOC shall be due ten days after date of this Order* (cc: by Southern Dist. of Illinois)

3/2/81 LETTER transmitted to all counsel of record indicating our Cause No. and receipt of transfer, Fld. by Court *(Copy Only)

3/9/81 MOTION for Consolidation of actions 81-230-C(1) and 80-1202-C(5), Fld. by Pltf. (Ref_____)
MEMO In Support thereof, fld.
**ORIGINAL MOTION FILED WITH JUDGE CAHILL UNDER #80-1202-C(5)*

3/9/81 FIRST INTERROGS (17) by Respondent Shell Oil, Fld., Directed to EEOC

3/9/81 FIRST REQUEST for Production of Documents, Directed to EEOC, by Shell Oil, fld.

3/9/81 *ANSWER* to Application for Order to Show Cause Why a Subpoena Should Not be Enforced, by Respondent Shell Oil
OPPOSITION of Shell Oil to EEOC's Application for Order to Show Cause, Fld. W/ATTACHED APPENDIX

3/16/81 *ORDER* (HKW) Upon consideration of motion of Pltf Respondent, Shell Oil Company, for consolidation of Cause #81-230-C(1) with #80-1202-C(5), ORDERED that said causes are consolidated. Cause #81-230-C(1) is consolidated with prior-filed Cause #80-1202-C(5) and for all purposes is assigned to the same docket as was the prior-filed action. (cc: parties)

3/16/81 *Cause #81-230-C(1) TRANSFERRED to Court #5, pursuant to above Order*

3/19/81 ORDER TO SHOW CAUSE (CSC) fld. Ordered that respondents Shell Oil Co. and Roger Rice appear on the 17th day of April, 1981, at 10:00 a.m. in the Courtroom of the Honorable Clyde S. Cahill, and show cause why they should not be compelled to comply with the subpoena issued to them. Further ordered that Shell Oil Co. and Roger Rice be served with a copy of the show cause order, on or before the 1st day of April, 1981. cc: attys.

| | |
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| 4/1/81 | MOTION to Strike Defense w/suggestions in support of Motion of Applicant to strike defense fld. by Applicant EEOC. |
| 4/1/81 | MOTION for Protective Order that discovery not be had w/memorandum in support. fld. by applicant EEOC. |
| 4/3/81 | MOTION For Continuance w/memo fld. by pltff-respondent Shell Oil; REF. 6/30/81. |
| 4/6/81 | MEMO FOR CLERK—Shell Oil Co. is granted to 4/17/81 to respond to EEOC's Motion to Strike and Motion for a protective Order; SO ORDERED (CSC) |
| 4/9/81 | MEMORANDUM IN OPPOSITION to respondent-pltff's Motion for Continuance w/exhibit A. fld. by EEOC. |
| 4/10/81 | MOTION of Shell Oil Co. to enforce stipulation fld. by Shell Oil Co. w/memorandum in support & proposed order. |
| 4/10/81 | MOTION for reconsideration w/memorandum of law in support w/attachment #1 & Proposed order fld. by EEOC. |
| 4/10/81 | MOTION for Protective Order w/memorandum in support & proposed Order fld. by EEOC. |
| | 4/13/81 Motions of 4/1/81 and 4/3/81 delivered to Judge Cahill. |
| 4/14/81 | HEARING RESETTING—By order of Court, sua sponte, the hearing on the order to show cause in cause is removed from setting on FRIDAY, April 17, 1981, and reset for FRIDAY, MAY 15, 1981, at 10:00 a.m. (CSC) fld. cc: attys. |
| 4/14/81 | CAUSE #80-1202C (5) Extension of time—pltff, Shell Oil Co., is hereby granted up to and including April 24, 1981, to respond to defts' Motion for Protective Order and Motion to Reconsider. Fld. (CSC) So Ordered. |
| 4/17/81 | CAUSE #80-1202C (5) OPPOSITION of Shell Oil Co. to Motion to strike defenses and Motion for Protective Order filed by Equal Employment Opportunity Commission in Civil Action No. 81-230C (5). fld. |
| | 4/21/81 Motions of 4/10/81 and file delivered to Judge Cahill. |
| 4/23/81 | CAUSE #80-1202C (5) OPPOSITION to Motion to Enforce Stipulation fld. by EEOC. |
| 4/24/81 | CAUSE #80-1202C (5) OPPOSITION of Shell Oil Co. to Motion for Reconsideration. fld. |

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| 5/15/81 | PARTIES PRESENT FOR HEARING ON ORDER TO SHOW CAUSE, PLFF'S EXHIBITS A THRU N ADMITTED INTO EVIDENCE, CAUSE ARGUED, HEARD AND TAKEN UNDER SUBMISSION |
| 5/15/81 | SUPPL MEMORANDUM—On Disclosure To Outside Consultants, fld by Plff., Shell Oil |
| 6/24/81 | TRANSCRIPT—Of Hearing, fld by Court Reporter for both causes (80-1202C(5) |
| 6/30/81 | ORDER & MEMORANDUM (CSC)—Fld., Ordered that the EEOC's Motion to Strike is DENIED. FURTHER ORDERED that the EEOC's Motion for Protective Order that discovery not be had is STAYED as to Shell's Interrogs #11-13, pending the filing of a certificate of privilege by the EEOC and DENIED as to Shell's Interrogs #1-10, 14-17, and Shell's First Request to Inspect and Copy Documents. FURTHER ORDERED that Shell's Motion for Continuance is DENIED AS MOOT. FURTHER ORDERED that the EEOC's Motion for Reconsideration is GRANTED. FURTHER ORDERED that Shell's Motion to Enforce the Stipulation is DENIED. FURTHER ORDERED that Defts' (EEOC, et al.) Motion for Protective Order is DENIED AS MOOT. cc: attys |
| 7/20/81 | MOTION—For Reconsideration and Clarification of the Order of Court of June 30, 1981, W/Memorandum in Support and Proposed Order, fld by the Plff., (ref____). |
| 7/28/81 | CROSS-MOTION—For Clarification, W/Memorandum in Support and Proposed Order, fld by Shell Oil Co., (ref_____) |
| 7/29/81 | NOTICE OF APPEAL fld by pltff-deft Shell Oil Co. cc: attys. Judge Cahill. Dist Ct. & USCA8 fees pd. Copy Notice of Appeal, Copy of Order & Memorandum filed 6/30/81 and 2 cert. copies docket sheets delivered to USCA8. 7/30/81. 80-1202C (5) consolidated with 81-230C (5). |
| 8/10/81 | REPLY to Cross Motion for Clarification fld. by EEOC. |
| 8/24/81 | CAUSE #80-1202C (5) SUPPLEMENTAL MEMORANDUM of Shell Oil Co. in Opposition to EEOC's Motion to Dismiss, First Motion for Reconsideration, Motion to Strike defenses, and Second Motion for Reconsideration and clarficiation w/attachments fld. |

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| 9/9/81 | ORDER—USCA. fld. This case is remanded to the District Court for the Limited purpose of having that Court rule on appellant's pending Motion for Clarification of the District Court's memorandum and order of June 30, 1981, in No. 80-1202C(5). This court retains jurisdiction pending remand. cc: attys. |
| 9/17/81 | REPLY of EEOC to Supplemental memorandum of Shell Oil Co. in Opposition to EEOC's Motion to Dismiss, First Motion for Reconsideration, Motion to Strike defenses, and Second Motion for Reconsideration and Clarafication. [*Sic*] fld. |
| 9/22/81 | JUDGMENT (CSC) fld. Ordered, adjudged, and Decreed that judgment is entered for the EEOC in civil action No. 80-1202C (5), Shell's action to quash the subpoena. Ordered, Adjudged, and Decreed that judgment is entered for the EEOC in civil action No. 81-230C (5), EEOC's action to enforce the subpoena. cc: attys. |
| 9/22/81 | ORDER AND MEMORANDUM (CSC) fld. Ordered that civil action No. 80-1202C (5), Shell's action to quash the subpoena, is DISMISSED. Further ORDERED that Shell shall comply with the subpoena issued it in connection with the investigation of the charge by allowing EEOC reps access to the subpoenaed documents and info commencing no later than October 23, 1981, and continuing until production is completed. Ordered that EEOC may not turn over any of the info obtained via the subpoena to outside consultants. Further Ordered that EEOC;s mtns for protective order that discovery not be had and to strike defenses are DENIED. cc: attys. |
| 10/9/81 | NOTICE OF APPEAL fld. by deft-appellant. cc: attys, Judge Cahill. Dist. Ct. & USCA8 fees not required—USCA retains jurisdiction. Cert. Copy Notice of Appeal, copy of Judgment entered 9/22/81 and Order of 9/22/81, and 2 cert. copies docket sheets delivered to USCA8, 10/13/81. |
| 10/9/81 | MOTION for stay of enforcement Order pending Appeal and for approval of supersedeas Bond, w/Memorandum of Shell Oil Co. in support & Proposed Order. fld. by Shell Oil Co. (ref. 11/9/81). |
| 10/9/81 | APPEAL BOND—LODGED. by Shell Oil Co. |
| 10/13/81 | PUBLISHED with West Publishing Co., Bureau of National Affairs and Lexis Opinion Collection Dept.—Order & Memorandum filed 6/30/81 and Judgment, Order and Memorandum filed 9/22/81. |

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| 10/19/81 | MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION to Motion for stay of enforcement pending appeal fld. by EEOC. |
| | **10/14/81 Motions of 10/9/81 and 10/13/81 and file delivered to Judge Cahill. |
| 10/26/81 | DESIGNATION OF CLERK'S RECORD AND STATEMENT OF ISSUES ON APPEAL. fld. by Shell Oil Co. (appellant). |
| 10/30/81 | REPLY MEMORANDUM of Shell Oil Co. in support of Motion for stay of enforcement Order pending appeal w/attachments fld. |
| 11/9/81 | ORDER AND MEMORANDUM (CSC) fld. ORDERED that Shell's motion for stay of the enforcement order of September 22, 1981, pending appeal and for approval of a supersedeas bond in the sum of $250.00 is GRANTED. cc: attys. |
| 11/9/81 | COUNTER DESIGNATION OF CLERK's RECORD ON APPEAL fld. by EEOC. (appellee) |
| 11/16/81 | DELIVERED TO USCA8.—One certified & 2 copies of designated record, 1 vol. transcript of hearing of 5/15/81. |
| 11/24/81 | MOTION for permission to file notice of Appeal out of time fld. by EEOC. Notice of Appeal Lodged. Leave to file Notice of Appeal Granted (CSC) 12/3/81. |
| 12/3/81 | Motion of 11/24/81 and file delivered to Judge Cahill. |
| 12/3/81 | NOTICE OF APPEAL fld. by pltff EEOC. cc: attys. District Court & USCA fees not required. |
| 12/9/81 | Delivered to USCA8—Cert. copy Notice of Apeal, copy of Order and Memorandum fld. 9/22/81 and 2 cert. copies of docket sheets. |

TRANSCRIPT OF HEARING
May 15, 1981

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Action
No. 80-1202-C(5)

SHELL OIL COMPANY, PLAINTIFF,

*v.*

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL., *defendants.*

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Civil Action
No. 81-230-C(5)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PLAINTIFF

*v.*

SHELL OIL COMPANY, ET AL., DEFENDANTS.

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St. Louis, Missouri
May 15, 1981

[1] TRANSCRIPT OF HEARING

Transcript of testimony adduced and proceedings had during the hearing of the above-styled cause before the

HONORABLE CLYDE S. CAHILL, JR.,

Judge of the District Court of the United States, Eastern District of Missouri, Eastern Division, presiding in Court No. 5 thereof.

APPEARANCES

MSES. DONNA L. HARPER and DIANNA B. JOHNSTON, attorneys for plaintiff EEOC.

[2] MESSR. MARTIN D. SCHNEIDERMAN, MS. SUSAN J. SANDLER, MESSR. CHARLES A. NEWMAN and MESSR. SAMUEL T. PERKINS, attorneys for defendant Shell Oil Company, et al.

* * *

THE COURT: Now we'll hear the matters involved, EEOC versus Shell Oil, one of the number of matters.

MR. NEWMAN: Your Honor, if I may I'd like to reintroduce myself to the Court. I'm Charles Newman representing the Shell Oil Company and I'd like to introduce to the Court as well, counsel appearing on behalf of Shell in addition to myself are Mr. Martin Schneiderman, Mr. Samuel Perkins and Mr. Schneiderman and Mr. Perkins are both members of the District of Columbia Bar and they're with the firm Steptoe & Johnson. Additional counsel for Shell Oil Company is Susan Sandler who is with the company and is a member of the bar of the state of Pennsylvania. I'm pleased to introduce these members of the bar to the Court and with the Court's permission ask that they be permitted to participate in these proceedings.

MR. SCHNEIDERMAN: We've participated quite a bit already, Your Honor. First of all I'd thank Your Honor for the indulgence of the continuance for Friday the 13, we appreciate that adjustment and it's a pleasure to be in St. Louis, it's pretty as the postcard, Your Honor.

Your Honor, we're here on the immediate basis to [3] deal with a request to show cause that I want to point out that initially we've had a morass of pleadings filed in this case.

THE COURT: You used that term, Counsel, I'm glad you did that.

MR. SCHNEIDERMAN: And there are a number of open issues and open questions and I might say that while I intend to focus initially on the show cause I would very much like to conclude with an overview statement of how we think all that morass may be resolved very efficiently and very expeditiously and believe it or not, I think it can be done.

Now first focusing on the subpoena and order to show cause we believe it should not be enforced, Your Honor, basically because the underlying charge is invalid, unlawful and so is the subpoena. I'm going to develop the reason why we've taken that position but preliminarily I have to emphasize that the complex issues raised in that case re-

quire some limited discovery be concluded before the show cause determination can be made. We have raised substantial arguments regarding both the charge and the subpoena. We've filed a complaint, a motion to dismiss was filed and that motion was denied. The Court issued an order indicating that these issues can best be resolved after development and presentation of the facts. That to me represents a notion of some limited discovery and we think that that [4] discovery should take place now Your Honor so that in resolving the show cause the substantial challenges that we've raised could have a meaningful hearing because without that discovery which I will develop further— without that discovery that meaningful hearing on the Shell cause cannot be provided.

Now let me first perhaps overview the arguments that I'm going to cover relating to the show cause and it really has an impact on discovery and all the other issues.

We believe the charge—the underlying charge is invalid for two reasons. First of all, Your Honor, it represents a misuse of commissioner's charging authority. In this case it is being used as we understand it upon our belief as a general audit investigatory power of EEOC, a power that it does not possess. Secondly, the underlying charge is invalid because it fails to provide notice with any sort of specificity of the particular claim—the particular allegations of discrimination contrary to statute and regulations. Those are the areas relating to the charge.

As to the subpoena, Your Honor, we believe the subpoena is in itself unenforceable because it has not been provided with—we've not been provided an assurance that the government will not release the information to a third part consultant who is not a—who is not an employee of the government. The subpoena is also invalid because it [5] represents a violation of the Federal Reports Act and finally, Your Honor, individually portions of the subpoena are invalid because they represent requirements to make compilation irrelevant or burdensome.

Now we'll go back and cover each of these issues. The key ones deal with the underlying charge, the key in the sense that they raise a rather unique issue. I would say

that the factual setting of this case indicates that we have before us an issue unusual indeed, perhaps unique. This factual setting makes a very compelling position for Shell's Wood River Facility. It demonstrates that EEOC has misused the commissioner's charge authority. When Title 7 was enacted the agency was established to respond to complaints—it was a complaint oriented agency to investigate and attempt to conciliate charges. Now there was a commisioner's charge authority. EEOC's briefs in the legislative history indicate what that authority was about. That authority responded to a concern that employees may not come forward because of concern about retaliation so they didn't want to sign their names. Legislative history indicates that the commissioner's charged authority would permit EEOC to act. They would have reasonable cause because someone would come forward, an individual would come forward and express their concerns about retaliation and then the commissioner himself or herself could issue a charge. That is what commissioner's [6] charge was basically intended to do and I think that's even in the EEOC's briefs. Whatever additional purposes the charge may—commissioner's charge authority might involve one thing it does not involve, Your Honor. EEOC is not an agency that has authority to decide to audit target industries, target companies that they feel are worthy of interest. They need something more than just interest. Now this misuse of the commissioner's charge authority is apparent and magnified in this case, Your Honor, because unfortunately EEOC has selected for this audit a company with a facility—the Wood River Facility with an extremely commendable performance.

Let us look at the factual setting of this. It employs now about seventeen hundred employees six years prior to the charge so it's a large facility and six years prior to the charge it has never—had never had any charge filed against it by any employee or applicant. In a decade, Your Honor, it has had two charges filed with state agencies and both dismissed without cause and over the decade, Your Honor, they've had over two thousand employees, the size of the organization has grown smaller. In my experience,

Your Honor, of about ten years in Title 7 practice I can't say that it is a unique record but I could say with confidence it is unusual indeed for a facility to have that sort of record of not having individuals coming forward [7] and filing charges and not suprisingly, Your Honor, my review of the composition work of the facility indicates that they're well above available labor market in terms of the percentages of blacks and females employed there. I would say that in essence I see nowhere in the record—nowhere in my review a scintilla of practices suggesting the basis or justification for issuance of a commissioner's charge of sex or race discrimination. If there had been an array of individual charges pending we could see that EEOC has some basis of concern. It has none to the company's knowledge. It is awaiting a statement of commendation for its performances and instead what does it receive? It receives a commissioner's charge alleging the complete array—possible broadest array of sex and race discrimination without any statement as to why.

Now that's the setting from the company's vantage point. Let's look at EEOC's vantage point. What has happened in recent years? You recall that the charge was filed here in the end of 1979. In the beginning of 1979 EEOC established the Office of Systemic Programs. It had existence as a subsidiary organization but in the beginning of 1979 it established this organization as an independent major operation of EEOC. It had support staff in Washington, computers, demographers, whatnot and in all the districts, Your Honor, they set up EEOC's personnel assigned to the [8] Office of Systemic Program. This is now current, this is a 1979 program. Now they have this system now of looking into systemic programs and what do they need to keep all their personnel busy? They need across the board charges of discrimination by commissioner's charges so what do they do? They set up a system of having—I don't want to use a quota system but what they did was sent out instructions—this is all on information and belief, Your Honor, I want to get this in discovery, okay?

THE COURT: I was going to suggest that that probably ought to be added in your comments.

MR. SCHNEIDERMAN: Yes, Your Honor, okay, so let the record indicate on my statement this is what we're trying to demonstrate in discovery.

We understand, Your Honor, that they would send out a system of asking the various districts to come up with your targets for commissioner's charges. What does this tell us? It tells us initially that the Wood River is selected. One basis for its selection is geography. It happens to be in a district that needs additional commissioner's charges or across the board allegations. Does this tell us about the employment practices of Wood River? No, it does not. What is another standard that I believe applies? They're not going to use all these resources, the computers, the demographers for a small company, they want [9] to use it for large companies so Standard Number 2, the Wood River Facility, is a large facility. What is yet another standard that we believe has been applied? This one is rather clear. In EEOC's—some manual statements as to selection technique, they indicate that they look for companies that they believe are in growth industries, they want a target company that afford opportunities for employment. They see that this is a more interesting area of investigation. When this charge was filed undoubtedly the refinery business in Wood River was viewed as a growth industry.

Now, Your Honor, this might be a worthwhile standard for an organization that has authority to go in and investigate companies that are worthy of investigation, but for an organization that is mandated to investigate based on reasonable cause or cause to believe that discrimination has occurred, it seems to me you cannot and should not rely upon factors external to the company and I believe that is what has occurred here and that is exactly one of the major areas of our discovery to demonstrate that the selection technique is more of an audit technique and not directly related to the internal practices of the company.

If those external factors have played a significant role in the decision to issue this charge, Your Honor, we believe that that would be an apparent misuse of the [10] commissioner's charge authority and Your Honor, this is a very recent activity, these occurred in 1979. I think the record

would show that there was an increase of commissioner's charge based on the whole systemic program.

THE COURT: Well, Counsel—

MR. SCHNEIDERMAN: Yes?

THE COURT:—Is it your position that an investigative agency could not use the requirements that you've indicated, that they could not consider the fact this was a large company, that it did have growth potential and it was located in an area in which perhaps there were not as many large companies or not as many complaints as there might have been in other districts? Is that improper?

MR. SCHNEIDERMAN: Your Honor, there is an organization called Office of Federal Contract Compliance—

THE COURT: Yes?

MR. SCHNEIDERMAN: —That agency uses just these types of considerations. It is an agency that has general audit responsibilities. For that agency I think these are reasonable standards. For EEOC, an organization that is to respond to complaints and to respond to charges filed, it is a misuse of that authority to say that we're now going on our own to consider areas or targets that are of interest because it does interest us because of these extraneous factors. The legislative—Your Honor, as we pointed [11] out in one of our briefs which had the *Clark* case memorandum, that drew a clear distinction between EEOC and the FTC. The FTC could go in on suspicion like a grand jury just for interest. Even the other briefs—EEOC's brief points to the agency most analogous to EEOC and that would be the NLRB. That agency, Your Honor, responds to charges. It does not go out and find target techniques, it does not say that we ought to look into what this company is doing, it needs a charge and a charge has to be based on something and that's what we are saying, Your Honor, is what the misuse is here.

THE COURT: All right.

MR. SCHNEIDERMAN: Okay. Now that is the first half—oh, by the way, Your Honor, on this OFCCP matter that I referred to, we have here—there was a recent report of the General Accounting Company and we'll have copies of the relevant portions and we have the entire report, but

the GAO, the General Accounting Office made an overview of EEOC's functions and it found a determination that the systemic programs funding essentially overlaps on OFCCP's and then it recommended the consolidation of the functions. What is interesting that a government agency looks at this and sees they are now functioning similarly. It should not and has not been intended for EEOC to function in the matter of that OFCCP has and this is a unique issue I think a first impression clearly in the circuit and to my mind in any [12] circuit.

Now we go to second point regarding the charge. This is more technical. It deals with the element of sufficient notice in specificity in the charge. Your Honor, the statute itself says that the charge ought to contain the date, place and circumstances of the alleged discrimination practices. The charge here provides us with the place, nothing else as far as we're concerned. The date and circumstances are insufficient to provide us with sufficient notice, there is not one specified practice. I would follow that up is—as stringent as the statute appears, EEOC has implemented the statute with its own regulation and its own regulation states that a charge should contain a "clear and concise statement of the facts including pertinent dates constituting the alleged unlawful practices." We have not seen a clear and concise statement of the facts. This is EEOC's own regulations.

Now, Your Honor, if this was an individual, an employee, a layperson unsophisticated in requirements of filling out charges we could see application of another provision that permits some liberality but this is the chairperson filling out a commissioner's charge with the commissioner's own regulations calling for a clear and concise statement of the facts. We deserve it, we need it and this is not quite as technical a procedure as it might appear [13] because the purpose of these requirements in the statute and in the regulations are twofold; number one, they permit the company the option to consider what the practice is and perhaps cease and desist if it is in fact discriminatory and eliminate the incurring of liabilities. This is a very important aspect of notice. We don't have it here. The state charges here re-

ally do not provide a statement of any practices. Secondly, it relates to retaining of evidence. I really could not advise what evidence is to be obtained, I guess nothing, perhaps it's just unwieldy and unworkable to know exactly what ought to be retained and I think really it loses that effect. You do not know what to retain so I think the very objectives of the notice are not met so we're not talking about just a procedural requirement, we're talking about a procedural requirement with substantive overtones. I guess we could put these two arguments together and simply say that we believe that EEOC in issuing a commissioner's charge must possess—it must have, it must articulate some reasonable basis for issuing commissioner's charge. We're not saying they have to prove their case, we're not saying they must have a prima facie case, we're not saying they have to disclose all their facts, we are saying that they must possess and articulate some basic underlying circumstances and practices of that charge period.

That gets us, Your Honor—I would like to make [14] one passing reference about the charge to the *Dean Witter* decision. The *Dean Witter* decision is analogous in the sense that in that case a question was enforcement of a subpoena following a commissioner's charge and a Court in that case found that the date was not specified as required and found that the charge was deficit and it should not be enforced. I would say that the EEOC views that case as an aberration. I view that case as a small step in the right direction.

Now we go on to some matters about the subpoena. The first issue deals with the asserted release, the authority to release the information that they would obtain via the subpoena to outside third party consultants. The statute 706C refers to a prohibition of employees from disclosing this information to the public. EEOC argues that a third party consultant is an employee. Obviously, third party consultant is not an employee. The provision is rather explicit that employees may not disclose to the public, a third party consultant is not an employee and therefore must be viewed as a part of the public, Your Honor.

We have today a very interesting case that just came down in the Tenth Circuit in an analogous area. That dealt

with requirements of access and to—under EPA and in those cases, Your Honor, their provision was the EPA—the EPA administrator or his authorized designee and was far broader than the employee provision in our case, in 709E and [15] even in that setting, Your Honor, of the Tenth Circuit they ruled that an authorized representative meant the government employee or government representative and not an outside consultant. This just came down and we have a very short brief to submit. I would add that brief points out that there is a contradictory position of district courts but bear in mind the statute they dealt with authorized representatives, the statute here deals with employee—prohibitions on employees.

Now the Federal Reports Act argument is an argument that is part and parcel of the general audit authority that we have criticized in the commissioner's charging authority. The Federal Reports Act would apply to general investigatory functions of targeted industries. The Federal Reports Act—the prior act and the modified amended act applies to OFCCP for example. This is the position of OMB, the federal agency that enforces the Federal Reports act and the new act. They have taken a position that if OFCCP wishes to do its general auditing of selected companies it must clear its request with OMB. If as I have suggested EEOC is using the commissioner's charging authority much like OFCCP then it is found in the same fashion as OFCCP to have its request cleared by OMB.

Your Honor, since we have I think these major overview issues about the charges and the subpoena I—we'd anticipated resolving those issues. There are some [16] particularized questions regarding the subpoena itself dealing with relevancy and burdensomeness, however, I would put those issues aside, Your Honor, and see what EEOC has to say and get the Court's indulgence on these other issues to consider them at a later date or whenever it's convenient.

THE COURT: It might be a bit more coherent to handle the overall questions first before we get into the specific allegations as to the deficiency.

MR. SCHNEIDERMAN: Okay. Finally, Your Honor, I would just say I had promised to bring order to the morass

and with that we have today also a proposed order which contemplates the following: we believe that very limited discovery regarding basically the techniques that we've talked about, the misuse of the commissioner's charging authority and in—in some relating the Federal Reports Act, a small number of interrogatories and perhaps one deposition and we would be ready to go with a definitive motion of a summary judgment and we believe we could set out a schedule that all issues in this case can be resolved in a very expeditious fashion if we get any sort of cooperation from EEOC.

THE COURT: Well, I'm certain they'll cooperate if the Court orders it to be done and I'll give them a chance to respond to the arguments that you've made that the commissioner's charge is inappropriate under these circumstances.

[17] MR. SCHNEIDERMAN: Thank you, Your Honor, very much.

MS. HARPER: I'd like to reintroduce myself to the Court. I'm Donna Harper—

THE COURT: I do recall.

MS. HARPER: —Representing the Commission. The gentleman here to my right is James Neely, he's the regional attorney from St. Louis and Dianna Johnson is our counsel from Washington who's defending the agency on the suit by Shell. Miss Johnston is a member of the District of Columbia Bar.

THE COURT: For clarification—now I'm presuming that there are other suits against—there are other suits brought by EEOC involving Shell Oil Company and involving the same pertinent issues. This is not the only one, is that correct, or do you know of others?

MS. HARPER: Other suits brought by EEOC against Shell Oil?

THE COURT: Yes.

MS. HARPER: I'm not familiar with any. I presume that there were others—

MR. SCHNEIDERMAN: This is the only case of EEOC.

THE COURT: This is the only one?

MR. SCHNEIDERMAN: Yes.

THE COURT: All right. Makes it easy for us or hard.

[18] MS. HARPER: Your Honor, we're at—in a somewhat difficult position this morning here because we're here to enforce our subpoena and as we've pointed out in our brief we have taken the position all along that the subpoena enforcement under the prevailing law in this and every other circuit requires simply that the agency prove that it has the authority to issue a subpoena, that the subpoena requests information that is to the matters under investigation or to the matters contained in the charge and that this subpoena isn't unduly vague, that it gives the company or the respondent notice of what it is to call upon to provide.

We don't believe that subpoena enforcement proceeding is proper forum to determine whether or not a commisioner who swore to a charge in fact had probable cause or whether there's merit to the commission having issued the charge. The defendant here is urging that we basically—despite it's contention to the contrary—that we basically have to have a prima facie case or that we basically have to enunciate facts in circumstances in the charge that are much greater than the commission and any of the circuit courts have ever required us to do. We don't believe also that the subpoena enforcement proceeding is a proper forum to challenge the agency's published procedural regulations or to challenge any of the standards which are published in the Code Federal Regulations pursuant to which commissioner's [19] charges are issued and by which the systemic program operates.

In any event, what we'd like to do I suppose first is I'd like to have counsel from headquarters, Miss Johnson, respond to the—to Shell's arguments with respect to the Federal Reports Act and arguments they made this morning on—Federal Reports Act and one other argument they made and then if we can get into the subpoena enforcement and if Shell is willing to come forward and show cause why the subpoena should not be enforced on the grounds that we believe are appropriate here, that is, why the subpoena is not relevant and why the authority does not or why the agency does not have authority to issue it and we're prepared to answer any of those arguments.

THE COURT: Let's hear from counsel from Washington.

MS. JOHNSTON: Good morning, Your Honor. We would probalby agree with Shell that perhaps one of the most important issues here is the issue of the sufficiency of the commissioner's charge. Where we disagree is in Shell's assertions that this is unique. This issue has been litigated over and over and over ad nauseum. Employers have repeatedly challenged the sufficiency of commissioner's charges. In every case, courts have upheld commissioner's charges that are indistinguishable from the one at issue here. Shell has chosen to call this an audit but it is not an audit and the issue in this case more importantly is not [20] what led to the issuance of the commissioner's charge, the fact is that commissioners have authority to issue a charge under oath stating that they have reason to believe that a particular employer has discriminated, that is what has happened here. Quite recently the District Court in the Middle District of North Carolina in the case of *Foodtowne Stores* v. *EEOC* observed that the EEOC is authorized to investigate a business suspected of engaging in unlawful employment practices. It is only necessary that EEOC put the employer on notice of the violation charged, a charge such as this here that the employer failed to recruit, select and train blacks and women and it is sufficient to meet the notice requirements. The employer does indeed know what it is that they—it is being alleged is happening. They say that they don't know what records to keep. Well, clearly if there is an allegation that they have failed to promote blacks or women, that they have failed to hire blacks or women, one of the things that they're going to have to keep is records of the applicant pool, that's not too hard to figure out. Court after court has held that if more notice than that were required it would mean that the commission in its investigation cannot ask questions to which it doesn't already know the answers. In this regard, I would like to point out that it's interesting to me that Shell has not raised any cases to support its argument and the reason it hasn't, Your Honor—[21] I can't urge you strongly enough to read the cases cited in our brief and in there there's that this is—has just been litigated countless times and always the

courts have come out with the position that EEOC is here arguing today.

Plaintiff's assertions in its opposition to our motion for reconsideration that it's not contesting the factual determination but is attacking the charge based— because it is based on no factual determination is absurd on its face, Judge, it's a circular argument. The point here is that the employer cannot inquire into the factual basis of the charge, as the court's in both Graniteville and Foodtowne have observed there's no provision in Title 7 which authorizes an inquiry into the sufficiency of the evidence supporting a charge and here we get to their issue of we have to have limited discovery. They don't have to have limited discovery. What is important is that a charge has been issued under oath, they are on notice of what their allegedly unlawful practices are and so inquiring into how we came up with that or what led the commissioner to believe it is irrelevant. It's also interesting that they keep saying "Well, we're not really trying to get into the basis of the charge" and so forth, yet repeatedly in their briefs and again before you this morning they started talking about their wonderful record as an employer. That's not relevant at this stage. All EEOC has done is initiated an investigation [22] to see whether or not in fact their assertions about their good record as an employer are true. They do—they did that again at paragraph thirteen of their complaint and in some of their interrogatories they're obviously trying to get to the merits of the charge and it is too early to get to the merits of whether or not they have discriminated.

The Fifth Circuit in a similar challenge to a commissioner's charge noted that charges just like this one are sufficient to begin the commissioner's investigatory processes. The court then said to hold otherwise would totally obscurate the powers of the EEOC to function under its charter from Congress. I can't stress enough, Your Honor, the importance of dismissing Shell on this issue. Employers must not now be permitted to make the kind of inquiry into the sufficiency of the charge that is attempted here and which no court has allowed. The harm that would be involved— that would work on the EEOC's functions are in-

calculable but a couple of them were noted by the court in the *Dean Witter* case. The first is that if the EEOC has to supply all the information which provided the basis for the charge, employers would undoubtedly then begin to challenge commissioner's charges on the basis that the EEOC should have or could have supplied more information. Another one—one, not all—but one of the reasons commissioner's charges were allowed was to protect people, aggrieved persons who were afraid [23] that they might be retaliated against if they came forward with a charge. If the employer can inquire into what was the basis for the charge it would completely do away with that reason for the commissioner's charges because they know the employer would have to be told the very thing that that provision was enacted for.

There is in the—under the general heading of sufficiency of the charge a related issue of the degree of specificity which is required be the dates of the discriminatory practices and until very recently every case that had considered the issue again had upheld commissioner's charges which stated that the violations were continuing, the concepts of contining violations in employment discrimination is well recognized. Now there is one case and that is the *Dean Witter* case in the Ninth Circuit which has said that the charge must specify the date the discrimination began. Realistically, Your Honor, that's a little difficult in systemic programs, almost by definition you don't know exactly when it began, probably it's reasonable to assume that it began quite some time ago even before the enactment of Title 7 but the nature of it is such that it's difficult to tell. More importantly is the court's reasoning in the *Dean Witter* case for saying specify the date and this commissioner's charge by the way did specify that it believed it was a continuing violation but at any rate, the court's [24] reasoning was that it would be important to discourage resistance to discovery by employers who might be fearful of the open-ended investigations. Well, that reasoning isn't applicable in this case, Your Honor, because in fact what has happened is in our request for information and our subpoena, the information has been asked for no further back

than 1976 so that's not the kind of open-ended discovery that the court seems to be concerned about in the *Dean Witter* case.

In any event, the charge has now been amended as you know and that amendment is sufficient under the terms set forth in *Dean Witter*. *Dean Witter* itself recognizes the temporal scope of challenge practices would be uncertain and said that a good faith estimate of the probable time periods would suffice and that's what we've done now with the amendment of the charge. Shell says that the amendment doesn't cure the prior alleged defect but the courts have repeatedly permitted the amendments of charges to cure technical defects and the amendment also relates back to initial charges. One such case involved a commissioner's charge and it's *Motorola Incorporated* v. *EEOC*, that's 317 Federal Supp. 282, so even assuming for the sake of argument that the original charge was defective, any such defect has been cured by the amendment.

The second major issue raised by Shell involves [25] the commission's use of consultants such as a statistician and computer experts to analyze the data submitted by the employer. Shell alleges that such—to turn over any material that they give to us to that person would violate the confidentiality provisions of 709 of Title 7. The commission's position which has been elaborated in our brief is that Section 705 Title 7 permits the commission to utilize agencies and individuals in and carrying out the commission's mandate and that as Senator Humphery explained when he introduced the non-disclosure provision and those provisions of 709 are abandoned publications, they are not meant to hamper investigations.

The courts should note that the non-disclosure provisions of 709 faded away once litigation has been commenced so the result of allowing or forbidding any outside consultants to see the—the data that the employer has turned over would be to perhaps—perhaps to initiate a premature case because those people, statisticians, would help to analyze the data and determine whether it gave good basis for a finding of cause or not and if not, there would be no suit ever and if so, then the record could be better prepared for

the court so their argument has that strange effect of reversing the Congressional intent which is to—as in Title 7, to do as much as you possibly can in the administrative area.

[26] I also would like to direct the Court's attention to the fact that Shell based a lot of its argument that 706 and 709 prohibits consultants from seeing the data. On the Circuit Court opinions in *Sears Associated Dry Goods* and *Burlington Northern* and those cases have all been reversed by the Supreme Court's recent decision in *Associated Dry Goods* and more ever, with regard to this subpoena enforcement action the commission's position is that Shell's arguments here are not well-founded, that the court could, if it felt otherwise, still enforce the subpoena with the stipulation that the information not be turned over to the consultants so that should not be a bar to the enforcement.

THE COURT: That's commonly done and frequently done in both labor litigation and securities and other commercial negotiable instruments, frequently that is done.

MS. JOHNSTON: Now turning to the issue of the Federal Reports Act, it's really a fairly simple issue, and whether this is the kind of information that was intended to be covered by the Federal Reports Act. The commission has already argued in its brief that it is not. Based on the fact that the definition of information in Section 3502 of the original Federal Reports Act doesn't include the kind of data gathered during a particular investigation but effective May 1st of this year the Federal Reports Act was replaced by Paper Work Reduction Act of 1980. The new act [27] strengthened and clarified the Federal Reports Act and the new act very specifically at Section 3518 says that the act isn't applicable to material gathered from—for administrative investigations. Shell's allegation that this investigation is—it is an audit is spurious. A commisioner has stated under oath that there is reason to believe that Shell discriminated against blacks and women at its Wood River Facility. It's true that the commission doesn't deny that similar questions may have been asked over the course of time to ten or more people. EEOC's job after all is a rather

narrow one I suppose, investigating charges of employment discrimination. Obviously similar questions arise. Again, if there's reason to believe that an employer has discriminated in hiring, questions regarding an applicant pool are relevant. That doesn't—the fact that may have come up several times does not make this particular investigation an audit. Any auditing types of activities that may be done by EEOC is done through their employer information reports, more commonly known as EEOC-1's, EEOC-2's, et cetera. Even if Shell's argument that the old Federal Reports Act did apply to requests made during an investigation when ten or more people happen to have answered the same question would prevail, there wouldn't be any remedy now because of the new act. The commission can only start over again and reissue its new questions which very clearly and they have [28] virtually conceded in their brief does not apply to administrative investigations. The only result then would be to add more delay to the case.

Shell's Federal Reports act argument is wholly without merit and we believe should be dismissed for failure to state a claim.

One last issue from the standpoint of the commission is whether the employer—whether an employer can challenge an administrative subpoena in court prior to the time the EEOC seeks judicial enforcement. The commission contends that it cannot and that Shell's suits against the commission in Civil Action 81-202-C should therefore be dismissed. It's important to remember that there is no harm done to an employer by issuance of a subpoena although we would certainly hope that most employers would see fit to cooperate. The fact is that they can refuse to comply with a commission's subpoena with impunity and only the court can order compliance. In order for a case to be ripe for judicial review the plaintiff must show that it has suffered or is threatened with some real and immediate harm. That is not the case prior to the time the EEOC seeks judicial enforcement. In practical terms this case is indistinguishable from the Supreme Court's recent case in *FTC* v. *Standard Oil* and in that case issuance of the charge and the administrative subpoena has no legal or practical effect on Shell [29]

Oil. It's true that the enforcement action was subsequently brought by EEOC but that doesn't change the fact that it had not been brought when the suit was filed.

Your Honor, it seems to the commissin to be very important to dismiss Shell's suit that was filed against us and to put employers on notice that the Federal Courts were not—will not permit employers to use the device of premature litigation to interfere with the proper functioning of the agency and burden the courts. As the Supreme Court noted in the *Sogo* (phonetically) case, "premature intervention denies the agency the opportunity to correct its own mistakes and leads to piecemeal review which at the very least is inefficient and which may prove to have been unnecessary." Shell has argued that their case is dinstinguishable from *Sogo* because this suit involves a challenge to a subpoena while *Sogo* was they say merely seeking a declaratory order the issuance of the complaint was unlawful. In fact, Sogo was faced with a lot more than just having to turn over some records to the FTC. Sogo was faced with an adjudicatory proceeding where they would have to present evidence and testimony. Therefore, the court's reasoning in *Sogo* is certainly applicable here. Also, Shell attempts to distinguish that case because this is the EEOC and not the FTC but again, I would direct the court's attention to the numerous cases that we've cited involving this whole [30] commissioner's charge issue and in most of those cases the court has—courts have referred to cases like *United States* v. *Morton Salt* then involve the FTC, have referred to those cases favorably and have said that the procedures of FTC and EEOC are at least analogous and in fact, many of those cases upholding commissioner's charges involving these issues came during the time when the '64 version of Title 7 was extant and since that time in '72 the commission investigatory powers have been broadened so their—that distinction is one without a difference.

Shell cites numerous cases for the proposition that a challenge to the sufficiency of a charge is ripe in an action to quash a subpoena. However, as the commission has demonstrated in its reply briefs, particularly a note 14, these

cases all arise in the context of enforcement actions or counterclaims. The one exception to that is one of the original *Associated Dry Good* cases and that is just—was very different in that the challenge there was to EEOC regulations so the ripeness issue was very different than in this case. The point is that employers ought not to be permitted to go to court to quash an administrative subpoena for which enforcement hasn't been sought. It's certainly possible that an agency would decide not to enforce a subpoena and again there would be the kind of waste of judicial resources that the Supreme Court expressed concern about in [31] that case and to dismiss the suit by Shell against the commission hardly leaves them defenseless. They admit repeatedly that the suit was for the purpose of halting the EEOC subpoena. If they have grounds for arguing that the subpoena shouldn't be enforced it could be done in that context.

I'd like to point out to the Court, too, that it certainly can rule narrowly if there is one issue that troubles the Court and the Court does not deem appropriate for a motion to dismiss it can still and should dismiss all those other issues on which Shell has failed to state a claim.

THE COURT: Thank you, your comments were interesting and do you want to reply?

MR. SCHNEIDERMAN: Yes, Your Honor.

THE COURT: All right.

(Recess.)

THE COURT: We're ready to resume and I'll hear you now.

MR. SCHNEIDERMAN: Yes, sir. Your Honor, just a few responses to a number of the areas. Many of them are covered in the brief and I'll try not to repeat what is covered in the brief.

First of all, Your Honor, on the pre-enforcement action, the motion to dismiss because it was a pre-enforcement action, obviously, Your Honor, I had thrown out my [32] section of oral argument on that issue because we got an enforcement action. The fact is that question is moot with the filing of an enforcement action that's been consolidated so I don't see how that lingers on as any possible issue. It is

clear that when you have an enforcement action whatever the elements of the arguments before it's no longer a question before the court.

Now I think on the key issue I must say I'm—remain confused and confounded by EEOC's position. On one hand, I sense that they admit they do not have general audit authority. This seems to be a tone accepted in the brief and an argument today. If they do admit that then we have a clear legal issue to address. On the other hand, in the interest of justice that they have this audit authority—this is confusing. On the other hand, I seem to see elements that they say that they do not have audit authority but what they say is the commissioner signs the oath and that is the end of the inquiry. You need reasonable cause, you need cause but even if you need cause there is no way to find out, there is no accountability for that particular requirement. Your Honor, I can't believe that this is the law and I don't believe that the various cases cited by EEOC even comes close to addressing that issue. It is not until 1979 that we have this Systemic Programs Office functioning in the way it has been. All the cases cited, early cases in the [33] early '70s and even those cases are very interesting, Your Honor. I don't think they detract from our position one iota. The *Dean Witter*, of course, is a case that the subpoena was not enforced because of a defective underlying charge. The *Chrysler* case cited is an individual charge in which there was an attempt to question—that—the aspects, the reasonable cause of an individual file on the charge. The Fifth Circuit decision cited by EEOC, they didn't specify it, but I assume from the brief that it's *NOPSI, New Orleans Public Service* v. *Brown*, it's a very intriguing case, Your Honor, because in that case the EEOC and the commisioner charged an array of statistical data and allegations far broader than was involved in this case and the District court on a point that was not reversed on appeal—the District Court found even that charge insufficient but he also noted that the 1972 amendments calling for oath requirements heightened and increased the obligations of EEOC in filing commissioner's charges and this is in conformity with other decisions. On appeal the court

found that the extended allegations in the *NOPSI* case were satisfactory. This is a far cry from the type of allegations involved in our case where we have a broad statement—example of a case cited, *General Employment Enterprises* v. *EEOC* and there was a single claim that the company does not employ Jews or blacks. That is a—that was the charge, it's a straight employment [34] practice, Your Honor. When you say you don't employ, you don't promote and you don't train, you don't assign, in one broad statement I think there is a very real distinction in terms of notice as to what the practice are involved. *Graniteville* was an individual charge, *Bowaters*—the *Bowaters* charge charged it was specific practices referred to in the commissioner's charge. The charge had a reference to testing—unlawful testing and unlawful use of particular categories of positions. It is simply not true that we have a vast array of indistinguishable charges, Your Honor.

In addition, I might add that none of the cases of the Eighth Circuit cases is clearly a novel issue even in EEOC's terms in this particular circuit so none of these cases addresses what I view as the issue of the Systemic Program approach of an audit technique.

Now as to the question of the amended charge and response to the *Dean Witter*, I believe Your Honor that it is not responsive to the question raised in *Dean Witter* and I might add in the *Dean Witter* case I know of no effective amendment that would bring back to life the charge that was viewed as defective in that case and I don't think an adding of the beginning date of the Title 7, Your Honor, is realistically a response to the objections raised by the court in the *Dean Witter* case.

I'd like to refer to the *Mohasco* decision which [35] is a Supreme Court decision which is not directly on point, Your Honor, it deals with technical filing requirements but I think it shows the thrust of the Supreme Court's attention to technical requirements. I raise this particularly in light of specifics, the negotiation issue that has been raised. In *Mohasco* the Supreme Court indicated that though you have technical requirements in the procedural it is very important to assure, even hinder justice, that we impose and

apply those technical requirements and they are written by Congress. There is a specification requirement Title 7. That specification requirement calls for a statement of the circumstances of the alleged discrimination. We do not have it in this case. This is important—I mentioned earlier, Your Honor, as to notice to us. I would say that it is also important for the court's purposes in deciding the relevancy of particular matters requested in the subpoena. In light of the *Mohasco*—in light of the obvious benefits that can be obtained by a clarification of the practices that have led EEOC to issue this broad commissioner's charge we think it is—must be viewed as a defective charge and the underlying subpoena, therefore, is unenforceable.

Now there was a reference here as to which confirmed my statement that the purpose of commissioner's charge related to possibly retaliation and a concern expressed that if there were retaliation and we were required to [36] disclose the names of the person the retaliation in the charge—the purpose of the commisioner's charge authority would be defeated. Your Honor, if EEOC has acted in this case, has issued that charge because of retaliation—possible retaliation to a person coming forward, that could easily be expressed in the charge without disclosure. It would provide a better understanding of exactly what prompted this commissioner's charge and I think that that is not the case here and I would not assume that EEOC by that argument is suggesting that any employee of this facility came forward and expressed concern about retaliation and I think the record that I've referred to earlier, the very commendable record of no charges whatsoever is still standing and I don't know whether that's an innuendo or assertion or whatever and I think it ought to be clarified.

One other point, procedural point relating to the *Dean Witter* decision, Your Honor. If a subpoena has been issued and there is a defect in the issuance of the subpoena, we're entitled, Your Honor, to an—for issuance of a subpoena and the commission must vote and approve on the issuance of a subpoena. We believe at best the *Dean Witter* requires that the commission reconsider, reconsideration of the issuance of the subpoena.

Finally, Your Honor, on the question of the Federal Reports Act, I want to clarify a statement. We believe [37] that if the commissioner's charging authority is being used as an audit device like the FCCP's authority then in fact it is covered by the new act. Generalized investigations are covered, OFCCP continues to be covered in the inquiries to the public so it's the underlying charges that we have made—the allegations we have made regarding the misuse of the commissioner's charging authority are valid with respect to the issuance of the use of the commisioners charge authority, then that authority would be subject to the Federal Reports Act and the Paper Work Reduction Act and approval of OMB would be required.

There's also further questions, Your Honor, I think that—

THE COURT: I think in view of the brief that I have here and the comments that you've made to date, the Court has a fair understanding of the issues and your position—

MR. SCHNEIDERMAN: Thank you, Your Honor.

MS. HARPER: Your Honor, I'd like to be fairly brief and—

THE COURT: It's always commendable.

MS. HARPER:—And I'd like to make several points. The first point I'd like to make is that despite Shell's characterization of this action what you have before you today is a simple action to enforce the subpoena. It is [38] not complex litigation, the standard for subpoena enforcement has been articulated in this Circuit and in the *Chrysler* case and in other circuits, the *University of New Mexico* case in the Tenth Circuit, it's been articulated by the Supreme Court. I'd like to just read to you from *Chrysler*. "A court faced with a command for enforcement is limited to determining whether the subpoena information is material and relevant to the investigation of a potential violation." They're citing from *Graniteville* saying that to look beyond that—to do otherwise would be not only to place the cart before the horse but to substitute a driver other than the one appointed by Congress and that is precisely what the defendant—what Shell here, excuse me, is trying to do is to look beyond what the agency has initiated by way of

commissioner's charge to look to see whether the agency's action in issuing the charge is based upon reasonable cause.

I believe Mr. Schneiderman just a moment ago said we have to have reasonable cause to issue a commissioner's charge and that is no longer true with the '72 amendment and reasonable cause was taken out of the act and a requirement placed simply that the commissioner swore to the charge. He wants to characterize that as a more stringent requirement. Most courts that have looked at it have not characterized it as so and in fact, *Dean Witter* looked at that issue specifically and said that it was not a more stringent [39] requirement.

Now we're prepared to call as witnesses here today the record custodian who can identify and authenticate all the jurisdictional matters that could be at issue. I don't know if Shell is contending that there isn't a charge, that you know—that it wasn't deferred or that they didn't get notice of it or anything along these lines and at the moment they haven't raised it in any of their answers or any of their pleadings so if you're prepared to stipulate that the charge exists and was deferred and was served we'd like to either offer those exhibits to the director's affidavit into evidence or we're prepared to put on testimony as to each of the many documents that are involved here.

THE COURT: Counsel, do you have any thought on the matter before I express an opinion?

MR. SCHNEIDERMAN: Your Honor, my concern is as to our objective in being here today was to assert a need to have some limited discovery before we would be in a position, Your Honor, to deal with the show cause. We believe as I said in the beginning that we need some limited discovery to provide a meaningful response to the show cause and the case law certainly does not preclude some limited discovery so I would say before we get into that, though, I think there might be areas that we might resolve that sometime in the future. We have come here with hopes and objectives of [40] securing that limited discovery.

MS. HARPER: And it is the commission's position that any discovery is improper. First of all, there is a plethora of case law which holds that an employer cannot inquire

into the basis of a charge. To allow that—to allow inquiry into the commissioner's basis for a charge is to allow Shell to do whatever the court that has ruled on this issue would not allow. It's a prolonged—it's to prolong the procedure that has been prolonged now well over a year. We have been seeking voluntary compliance and then since last September when the suit was initiated—it's just going to prolong it more. The standard for subpoena enforcement is whether we have the authority to issue a subpoena. I think clearly the agency does and I'm prepared to put the statutes into evidence and to answer their challenge that we have answered their challenge that the charge is insufficient.

THE COURT: I think you clearly have.

MS. HARPER: The other standard is that the subpoenaed information is not unduly vague. The defendant has never contended that they could not from the wording of the charge know what information is subpoenaed and if they were to raise that today I would have objected but I'd be delighted to answer. The only other standard for the court's review is whether the information subpoenaed is relevant on [41] the charge. I can cite to you language from *Graniteville* and *Local 104* that says that it is relevant but if the court wishes to do its own review of the charge versus the subpoena it's a mixed question of law; in fact, you can certainly look for yourself to see whether the information subpoenaed is relevant to the issue under investigation. I'm prepared to put on witness testimony to explain for the court's enlightenment any testimony that you do not understand the relevance of. The defendant again has never made any specific argument as to any specific subpoenaed item that that item is irrelevant to any specific issue. They didn't raise it in the administrative review process in its petition to revoke the subpoena. It wasn't addressed in any of the appeals of those petitions nor has it been addressed in their answer. They've made general allegations that the information is relevant, again this is all based on their challenge to the sufficiency of the charge. They cannot fairly argue that the charge does not put them on notice of

what's being investigated and we're prepared to argue all of that.

THE COURT: I think you're well-prepared and I don't think we need to get to that today. I want to give careful consideration to the arguments of the plaintiffs here but in all frankness and honesty, I'm inclined to think that the normal rule and the normal requirement of any court in handling questions of the sufficiency of the subpoenae is [42] narrow and limited to and to do more than that can only be done under special and unusual circumstances. You've indicated why you think that be true and the court wants to consider it carefully but in all fairness to everyone concerned, normally that would not be the case and normally the issuance of a subpoena by an agent or an official who has the statutory authority to do that would in and of itself be sufficient and of course, challenges to the sufficiency of the subpoena itself could be heard, its vagueness, its relevancy and so on, those are different matters handled every day by every Court in this building but you raised other issues which are different and I want to look carefully at the authorities you've cited to see if they hold and support your position. I don't think we need really any other testimony. I think you've covered it in your brief, the normal answers that we need as to those questions that raise questions regarding the surface deficiencies of the subpoena and—

MS. HARPER: We'd like to offer into evidence the exhibits and affidavits of the director, Mr. Mansfield.

THE COURT: That may be done.

MS. HARPER: And if Shell wants to waive objections to the admissibility of the amended charge which contains the date of the alleged violations in accordance with the language in a *Dean Witter* opinion—the actual copy of [43] the amended charge was not an attachment to the affidavit—

THE COURT: I see.

MS. HARPER: —Of the director so it would need to be in evidence for the court's consideration.

THE COURT: All right.

MS. HARPER: We'd like to offer into evidence as well—just a moment. Your Honor, would you like me to in-

troduce a new set of exhibits attached to the affidavit of the director to be marked into evidence or—

THE COURT: It might well be good to have one unified set just for the sake of symmetry and consistency. I have various files here because of the merger of a Illinois case and this case where we don't have them in an appropriate order so if you've got them in one—

MS. HARPER: I've got only one new set of the affidavit of the director with Exhibits A through N which is basically the charge, the petition to revoke and those sort of things and then I've got the three sets of the amended charge material which is the actual charge document amendment signed by the chair, Eleanor Norton.

THE COURT: That was signed some time ago and delivered to the party litigants here?

MS. HARPER: Yes, the parties all have copies of this exhibit and I've got a copy for everybody of the amendments and which we can have marked.

[44] MR. SCHNEIDERMAN: If I might, Your Honor, I don't see that we'll have difficulty resolving those issues but it seems to me that in due course in a short time, Your Honor, we'll be back here to resolve the particular questions of burdensome and relevancy that have been raised. I just want to point out it's important to recognize that we have in the record ample specific questions of the burdensomeness and relevancy.

THE COURT: Those are the kinds of things that we can answer usually without oral argument.

MR. SCHNEIDERMAN: With affidavits—

THE COURT: And I think the court will have no difficulty resolving those issues once we get to them. You're hoping I wouldn't get to them but—

MS. HARPER: I'm hoping you will so I know what I am responding to.

THE COURT: —And I understand that so I don't think there's any need for oral argument on the—

MR. SCHNEIDERMAN: I think that is satisfactory for us. I just don't see a need to stipulate particular items now, we'll both be submitting our particular documents.

THE COURT: Why don't you be sure that all parties have a copy and if you'll give me a complete file and you need not do it right this moment—

MS. HARPER: Well, I would like to offer these into [45] evidence because they will be necessary.

THE COURT: They may be offered into evidence and you may reserve your right to object. I wouldn't rule on them at this time.

MR. SCHNEIDERMAN: Thank you.

THE COURT: They are all considered offered into evidence.

MR. SCHNEIDERMAN: Are you going to give me a full copy?

MS. HARPER: I've provided Shell with three separate complete copies of that big package right there.

MR. SCHNEIDERMAN: Fine.

MS. HARPER: When I applied—the application for the order to show cause—that is the affidavit of the director and Exhibits A through N which I've just offered to the court. I'm sure you have three separate copies of it because I forwarded it myself. If you'd like me to recopy it for some reason I'll be delighted to do so.

THE COURT: All right. I think this will be sufficient and this will be helpful to the court and when we—it should not take the court long to resolve the issues that have been argued today. I expect to rule on this quickly.

MS. HARPER: We would just like to stress—I don't know how much we can stress this, but we would like to stress we just do not believe that there is any case law [46] supporting the proposition that discovery into the sufficiency of the charge is proper. It takes my breath away to think that we would have to respond to discovery requests, looking into how other charges are dropped, that we might according to the defendants' schedule or according to Shell's schedule—they want to depose employees of the commission about how charges are selected for systemic programing and that is a matter of public record, it is published and if they want—surely they know that that is not proper discoverable areas.

THE COURT: Well, Counsel, I think you learn as I have over the years, too, that these unique and unusual cases are quite common in all of the litigation that we have today. Things are not done routinely anymore in anything—even the simplest kind of motions turns into an argument that even the proverbial lawyers would have difficulty resolving.

MS. HARPER: That is the simplest kind of argument.

MR. SCHNEIDERMAN: Your Honor, would you care for any post-hearing brief at all?

THE COURT: No, I think not. I don't think we would need it at this time.

MR. SCHNEIDERMAN: Okay.

THE COURT: My hope is we'll resolve this matter quickly and you'll have my initial ruling within the next ten days or so so it shouldn't take a very long time.

Court's now in temporary recess.

(Proceedings were thus concluded.)

[47]

## REPORTER'S CERTIFICATE

I, Lynn Shrum, Official Court Reporter for the United States District Court for the Eastern District of Missouri, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that to the best of my ability the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/S/ LYNN SHRUM
LYNN SHRUM

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Action
No. 81-230-C(1)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
APPLICANT,

*v.*

SHELL OIL COMPANY, ET AL. RESPONDENTS.

## FIRST INTERROGATORIES OF RESPONDENT SHELL OIL COMPANY TO APPLICANT EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Respondent Shell Oil Company hereby requests Applicant Equal Employment Opportunity Commission ("EEOC") to answer separately and fully in writing under oath, within thirty (30) days after service hereof, the interrogatories hereafter propounded in accordance with Rule 33 of the Federal Rules of Civil Procedure. These interrogatories should be deemed continuing so that Applicant is obliged to furnish supplemental answers if it obtains additional or different information between the time its answers hereto are filed and the hearing of this cause.

### DEFINITIONS

As used in these interrogatories, the following terms have the meanings set forth below:

A. "EEOC" or "Commission" means the Equal Employment Opportunity Commission, defendant herein, and its members, officers, employees, and agents.

B. "OMB" means the Office of Management and Budget and its director, employees, and agents.

C. "GAO" means the General Accounting Office, the Comptroller General of the United States, and the employees and agents of the General Accounting Office.

D. "Staff Member" of the Commission means any officer, agent, or employee of the Commission but does not include the Commissioners. Unless otherwise indicated, such term shall be read to include both present and former Commission staff members, and where an interrogatory relates to an assignment or area of responsibility of any Commission staff member, it includes the past as well as the present. The term "assigned" when used in reference to a Commissioner or staff member means any formal or informal designation or appointment of such person (whether orally or in writing) to exercise functions, responsibilities, or duties with respect to a particular subject or in a particular job.

E. The term "person" refers to the plural as well as the singular of any individual, partnership, association, corporation, business trust, legal representative, organized group of persons, state or territorial government or branch, or political subdivision of a state or territory or a branch of a political subdivision.

F. "Identify" or "Identification":

1. When used in reference to a document, means:
   (a) Its date;
   (b) Its author or authors;
   (c) Its intended and all actual addressees and receipients;
   (d) Its length in pages; and
   (e) Its present location and custodian.
2. When used in reference to a conversation, speech, or testimony means:
   (a) The names of each person present;
   (b) The date or approximate date on which it occurred;
   (c) Where it occurred and, in the case of a conversation, whether it was face-to-face or by telephone and, if by telephone, where each of the parties to the conversation was located;
   (d) The substance of the conversation, speech, or testimony, in detail, stating who made each statement related; and

(e) Identification of each document which records, relates or refers to, or summarizes the conversation, speech, or testimony.

3. When used in reference to a person, means the person's name, last known home and business address, last known home and business telephone number, present business affiliation, and business affiliation during the time to which the interrogatory refers. The identification should be sufficient so as to enable plaintiff to notice a person's deposition under Rule 30 of the Federal Rules of Civil Procedure, or to subpoena said person pursuant to Rule 45 of the Federal Rules of Civil Procedure.

4. The term "document" means originals or any exact copies of written, recorded, transcribed, punched, filmed, taped, or graphic matter of every type and description, from whatever source derived and however and by whomever prepared, produced, reproduced, disseminated or made, including, but not limited to, any studies, reports, notes, memoranda, minutes, statements, comments, speeches, testimony, letters, notebooks, drafts, data sheets, work sheets, records, statistics, charts, tapes, data processing sheets or cards, or other paper or writing in EEOC's possession, custody, or control. The term "document" also means exact copies or reproductions of all the foregoing items upon which notations in writing, print, or otherwise have been made which do not appear on the originals. To the extent that data processing cards, magnetic tapes, or other computer-related materials are produced, produce all programs, instructions, and other similarly related information necessary to read, comprehend and otherwise utilize said data processing cards, magnetic tapes or other computer-related materials.

G. The "Federal Reports Act" means the Act as amended, 44 U.S.C. § 3501-12, the legislative history of the Act, as amended, and formal and informal rules, regulations, manuals, orders, opinions, or other instructions, directives, decisions, understandings or agreements of, be-

tween, or among OMB, GAO, or EEOC in connection with administration of, enforcement of, or compliance with the Act, as amended.

H. "Commissioner Charges" means one or more charges filed by an EEOC Commissioner pursuant to authority contained in Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended.

I. "Individual charges" means one or more charges filed "on behalf of a person [or persons, as defined in section 701(a) of Title VII] claiming to be aggrieved" under section 706(b) of Title VII of the Civil Rights Act of 1964, as amended.

## GENERAL INSTRUCTIONS

A. In lieu of identification of any document, the said document may be produced by Applicant for inspection and copying by Shell Oil Company. To the extent that any document so produced is responsive to more than one interrogatory herin, only one copy of such a document need be produced.

B. Unless the context of the interrogatory specifically states otherwise, references to the singular include the plural, references to the plural include the singular, references to one gender include the other gender, references to the past tense include the present, and references to the present tense include the past.

## INTERROGATORIES

1. With respect to EEOC's issuance of its October 26, 1979, "FIRST REQUEST FOR INFORMATION RESPONDENT SHELL OIL COMPANY, WOOD RIVER REFINERY CHARGE NO. 072800036," *separately, for each of the questions number 1 through 33:*

(a) Indicate whether EEOC has asked or is currently asking the same or a substantially identical question of ten or more persons, including Shell Oil Company, in connection with EEOC investigations of Commissioner Charges.

(b) Indicate whether EEOC has asked or is currently asking the same or a substantially identical question

of ten or more persons in connection with EEOC investigations of individual charges.

(c) Indicate whether EEOC has asked or is currently asking the same or a substantially identical question of ten or more persons, including Shell Oil Company, in connection with EEOC investigations of Commissioner Charges and individual charges.

2. Identify (by pertinent pages, parts, or sections) all EEOC documents, including manuals, directives, form books, form interrogatories, clauses, and clause books, that contain proposed, suggested, or specified clauses, questions, or interrogatories for use in EEOC audits or investigations pursuant to Title VII of the Civil Rights Act of 1964, as amended.

3. Were any or all of the questions or subquestions in the First Request for Information in this case based upon or derived from any documents identified in response to Interrogatory 2 above?

4. If the answer to Interrogatory 3 is "yes," identify (by pertinent pages, parts, or sections) the documents on or from which the questions or subquestions in the Request for Information were based or derived.

5. Identify all Requests for Information and Subpoenas issued by EEOC between January 1, 1976, and the present to parties charged by an EEOC Commissioner pursuant to Title VII of the Civil Rights Act of 1964, as amended. To protect confidentiality, names of charged parties or other references disclosing the identities of charged parties may be deleted wherever they appear in the Requests or Subpoenas.

6. Identify all Commission members and staff members assigned responsibility between January 1, 1976, and the present with respect to administration of, enforcement of, or compliance with the Federal Reports Act.

7. Identify all documents in EEOC's possession pertaining to the possible application of the Federal Reports Act to EEOC Requests for Information and/or subpoena requests. Include all documents, including correspondence, produced by OMB, GAO, or EEOC, alone or jointly.

8. Identify all conversations among staff members, Commission members, or staff members and Commission members, within the Commission, or with OMB or GAO, or both, pertaining to the possible application of the Federal Reports Act to EEOC Requests for Information and/or subpoena requests.

9. Identify all documents and conversations pertaining to EEOC's inquiries of GAO, and vice-versa, concerning the relationship between the Federal Reports Act and EEOC's Request for Information issued to Shell in this case.

10. Identify all documents and conversations pertaining to EEOC inquiries of OMB, and vice-versa, concerning the relationship between the Federal Reports Act and EEOC's Request for Information issued to Shell in this case.

11. Identify all Commission documents, conversations, speeches, and testimony, including rules, regulations, manuals, orders, opinions, or other instructions, directives, decisions, agreements or understandings, formal or informal, pertaining to proposed or specified goals, quotas, or other objectives for recommending, preparing, or filing a proposed or specified number of Commissioner Charges during proposed or specified periods of time.

12. Indicate whether EEOC has a system, program, or standard for recommending, preparing, or filing a proposed or specified number of Commissioner Charges during a proposed or specified period of time.

13. If the answer to Interrogatory 12 is "yes," explain how such a system, program, or standard is implemented.

14. Identify all documents, conversations, speeches, and testimony indicating, suggesting, or certifying that EEOC staff members have received or may receive performance bonuses or merit awards of any kind whatsoever in partial or total recognition of the staff members' abilities to meet EEOC goals, quotas, or other standards or objectives pertaining to recommending, preparing, or filing a proposed or specified number of Commissioner Charges during proposed or specified periods of time.

15. Aside from the charge in this case, are there any Commissioner Charges now pending against specific plants, facilities, divisions, locals, or offices of employers or labor

organizations who had 1,500 or more employees or members at the time of filing against them of the pending Commissioner Charges and who were not subjected to individual charges against the same plants, facilities, divisions, locals, or offices during the five-year periods prior to filing against them of the pending Commissioner Charges?

16. If the answer to Interrogatory 15 is "yes," indicate how many such charges are now pending, and the charge number, filing date, and charging Commissioner listed on each charge.

17. For each charge listed in response to Interrogatory 16, identify the charging documents and notices of charges that were provided to the parties charged. To protect confidentiality, names of charged parties or other references disclosing the identities of charged parties may be deleted wherever they appear in the charging documents or notices.

Respectfully submitted,

W. STANLEY WALCH
CHARLES A. NEWMAN
THOMPSON & MITCHELL
*One Mercantile Center*
*St. Louis, Missouri 63101*
*(314) 231-7676*

*/s/* _____
MARTIN D. SCHNEIDERMAN
SAMUEL T. PERKINS
MARK B. GOODWIN
STEPTOE & JOHNSON
1250 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

ATTORNEYS FOR SHELL OIL COMPANY

OF COUNSEL:
SUSAN J. SANDLER
SHELL OIL COMPANY
One Shell Plaza
P.O. Box 2463
Houston, Texas 77001

Dated: March 9, 1981

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Action
No. 81-230-C(1)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
APPLICANT,

*v.*

SHELL OIL COMPANY, ET AL., RESPONDENTS.

**RESPONDENT SHELL OIL COMPANY'S FIRST REQUEST TO INSPECT AND COPY DOCUMENTS PURSUANT TO FEDERAL RULE 34**

Respondent Shell Oil Company requests Applicant Equal Employment Opportunity Commission, within thirty (30) days from the date of service hereof, to produce and permit Shell Oil Company to inspect and copy each of the documents which are specified herein. This request should be deemed continuing so that the Applicant is obliged to supplement its response hereto if it obtains additional documents between the time its response hereto is filed and the hearing of this cause. Documents Specified:

All documents identified by Applicant in response to Respondent Shell Oil Company's first interrogatories served upon Applicant on March 9, 1981. These documents should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories in Respondent's first interrogatories.

Respectfully submitted,

/s/

W. STANLEY WALCH
CHARLES A. NEWMAN
THOMPSON & MITCHELL
One Mercantile Center
St. Louis, Missouri 63101
(314) 231-7676

Martin D. Schneiderman
Samuel T. Perkins
Mark B. Goodwin
STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 862-2000
*Attorneys for Shell Oil Company*

*OF COUNSEL:*
Susan J. Sandler
Shell Oil Company
One Shell Plaza
P.O. Box 2463
Houston, Texas 77001

Dated: March 9, 1981

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "First" Interrogatories of Respondent Shell Oil Company to Applicant Equal Employment Opportunity Commission" and "Respondent Shell Oil Company's First Request to Inspect and Copy Documents Pursuant to Federal Rule 34" were served by United States Mail, First Class, Postage Prepaid, this 9th day of March, 1981, to:

DIANNA B. JOHNSTON, ESQUIRE
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20506

and

DONNA L. HARPER, ESQUIRE
*Trial Attorney*
Equal Employment Opportunity Commission
St. Louis District Office
625 N. Euclid
St. Louis, Mo. 63108

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MARK B. GOODWIN

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF ILLINOIS

Civil Action No. 81-5020

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
APPLICANT,

*v.*

SHELL OIL COMPANY AND ROGER RICE, RESPONDENTS.

**APPLICANTION FOR ORDER TO SHOW CAUSE WHY A SUBPOENA SHOULD NOT BE ENFORCED**

1. This is an action for enforcement of a subpoena *duces tecum*, pursuant to Section 710 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S. C. Section 2000e-9.

2. Jurisdiction is conferred upon the Court by Sections 706(f)(3) and 710 of Title VII, 42 U.S.C. Sections 2000e-5(f)(3) and 9.

3. Applicant Equal Employment Opportunity Commission is the federal agency charged with administration and enforcement of Title VII, including, *inter alia*, the investigation of charges of unlawful employment practices.

4. Respondent Shell Oil Company is a Delaware corporation doing business in the states of Missouri and Illinois with facilities in Wood River, Illinois.

5. On May 15, 1980, Applicant issued its subpoena *duces tecum* No. SL-80-35 directed to Respondent Shell Oil Company's agent, Roger Rice. That subpoena was served on Respondents on May 16, 1980. It required Respondents to produce evidence needed as part of Applicant's investigation of a charge of unlawful employment practices which had been filed against Respondent Shell Oil Company.

6. On May 23, 1980, Respondent mailed its Petition to Revoke or Modify Subpoena No. SL-80-35.

7. On June 9, 1980, Applicant denied Respondent's Petition.

8. On June 26, 1980, Applicant received Respondent's Appeal of Determination on Petition to Revoke or Modify Subpoena No. SL-80-35.

9. On August 19, 1980, Applicant denied Respondent's Appeal.

10. To date, Respondent has failed and refused to comply with the subpoena.

WHEREFORE, the Equal Employment Opportunity Commission prays:

(a) That an order to show cause be issued forthwith directing respondents to appear before this Court on a day certain, to be fixed by said Order, and to show cause, if there be any, why an order should not be issued directing Respondents to comply with the subpoena;

(b) That, upon return of said Order to Show Cause, an order be issued directing Respondents to comply with the subpoena; and

(c) That the Equal Employment Opportunity Commission be granted such further relief as may be necessary and appropriate.

Respectfully submitted,

LEROY D. CLARK
*General Counsel*

JAMES N. FINNEY
*Associate General Counsel*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
2401 "E" Street, N.W.
Washington, D.C. 20506

JAAMES R. NEELY, JR.,
Regional Attorney

DONNA L. HARPER
*Trial Attorney*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
St. Louis District Office
625 N. Euclid
St. Louis, MO 63108
(314) 425-6535

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF ILLINOIS

Civil Action No. 81-5020

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
APPLICANT,

*v.*

SHELL OIL COMPANY AND ROGER RICE, RESPONDENTS

STATE OF MISSOURI
CITY OF ST. LOUIS

**AFFIDAVIT OF W. ED MANSFIELD**

I, W.Ed Mansfield, being duly sworn on my oath, do depose and say:

1. I make this Affidavit in support of the Application of the Equal Employment Opportunity Commission (hereinafter EEOC or "Commission") for an Order to Show Cause why a subpoena *duces tecum*, served by the Commission on the Respondents, should not be enforced.

2. I make this Affidavit on the basis of my own personal knowledge and my review of the Commission's investigative file entitled *Eleanor Homes Norton* v. *Shell Oil Company*, charge number 072800036.

3. I am the District Director of the EEOC's St. Louis District Office and as such I am the custodian of the Commission's investigative files in this office.

4. The St. Louis District Office is responsible for the investigation of charges alleging that employers, within the judicial districts of the Eastern District of Missouri and the Southern District of Illinois have committed employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e *et seq*.

5. On October 16, 1979, EEOC Commissioner and Chair, Eleanor Holmes Norton filed a charge under oath with the St. Louis District Office alleging that Shell Oil Company (hereinafter Shell) had unlawfully discriminated against Blacks and females in violation of Title VII, at its facilities

in Wood River, Illinois. A copy of the charge is attached hereto as Exhibit A (2 pages).

6. Upon receipt of the charge the Commission assigned it charge number 072800036.

7. On October 23, 1979 this office sent notice of the charge to the Illinois Fair Employment Practice Commission. A copy of that notice is attached hereto as Exhibit B. EEOC advised the Illinois Commission that EEOC would take primary responsibility for processing the charge, as had been previously agreed in the Worksharing Agreement between the two Commissions. A copy of the Worksharing Agreement is attached hereto as Exhibit C.

8. On October 26, 1979 this office served notice and a copy of the charge on Shell, pursuant to Section 706(b) of Title VII, as amended, 42 U.S.C. Section 2000e-5(b). This notice is attached as Exhibit D. Along with this notice and a copy of the charge was sent a two page cover letter explaining the investigation, and a request for information (Exhibits E and F, respectively).

9. During the period from November 30, 1979 to April 28, 1980, a total of seven letters were exchanged between my office and Shell after the initial meeting with Shell's representatives on November 28, 1979. These letters are grouped together and are attached as Exhibit G consisting of 27 pages.

10. Because efforts at gaining Shell's voluntary compliance from October 1979 to May 1980 were unsuccessful, and in furtherance of the investigation of the charge, on May 15, 1980, I issued for the Commission a subpoena *duces tecum* requiring the Respondent to produce certain evidence on May 28, 1980. This subpoena was served by registered mail on May 15, 1980, and was issued pursuant to Section 710 of Title VII, 42 U.S.C. Section 2000e-9, and Section 1601.15(a), EEOC Procedural Regulations, 29 C.F.R. Section 1601.15(a)(1973). A copy of that subpoena is attached hereto as Exhibit H. Copies of the proof of service, registered mail logs, and registered mail receipts showing delivery on May 16, 1980 are grouped together and attached as Exhibit I.

11. The Respondent timely served the Commission with its Petition to Revoke or Modify Subpoena No. 80-35, attached hereto as Exhibit J. The Commission issued its Determination on 6/9/80, denying Respondent's Petition on June 9, 1980 (Exhibit K). Respondent next requested and was granted an extension of time in which to file its Appeal of Determination on its Petition to Revoke or Modify (Exhibit L). A final agency Determination on the Appeal was issued on August 19, 1980 denying Respondent's Appeal and requiring compliance with the subpoena on September 18, 1980 (Exhibit M).

12. On September 18, 1980, Respondent failed to comply with the subpoena, and instead filed a Complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Eastern District of Missouri, Eastern Division, Civil Action No. 80-1202-C(5), and caused a summons to be served upon affiant (Exhibit N). To date Resondent has failed to comply with subpoena.

Further affiant sayeth not.

I swear that the preceding affidavit consisting of 3 pages, 12 paragraphs is true to the best of my knowledge.

/s/ _____

W. ED MANSFIELD
*District Director*

Subscribed and sworn to before me this 29th day of January 1981.

/s/ _____

PHYLLIS WESTER
*Notary Public*

## EXHIBIT D—NOTICE OF CHARGE

U.S. EQUAL OPPORTUNITY COMMISSION
ST. LOUIS DISTRICT OFFICE
1601 OLIVE STREET
ST. LOUIS, MISSOURI 63103

EEOC Charge No 072800036

To: 072800036
Shell Oil Company
Attn: Porter Slack, Mgr. of Ind. Relations
P.O. Box 262
Wood River, Ill
62095

**NOTICE OF CHARGE OF DISCRIMINATION AND REQUEST FOR INFORMATION**

*(See Section 1602.14, EEOC Rules and Regulations, and Section 704(a), Notice of Non-Retaliation on reverse)*

You are hereby notified that the attached charge of employment discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et. seq., has been filed against you.

You are requested to cooperate in the investigation of this charge by complying fully with the attached request for information which pertains to the allegations contained in this charge. You may, in addition, submit in writing a statement of position or other evidence with respect to the allegations. Such information will be made a part of the file and will be considered by the Commission during the course of this investigation. Telephone communications cannot be made a part of the record.

In addition to complying with the request for information mentioned above, your attention is directed to Section 1602.14 of the Commission's Regulations which requires the preservation of all personnel records relevant to this charge until a final disposition of this charge is made and to the non-retaliation requirements under Section 704(a) of the Civil Rights Act.

For future correspondence on this matter, please use the charge number shown above.

*Certification. I hereby certify that I mailed the original of this Notice, a copy of the charge and request for information referenced herein to the addressee herein.*

/s/

W. ED. MANSFIELD

EXHIBIT E—LETTER FROM W. ED MANSFIELD
(Oct. 26, 1981)

October 26, 1979

Shell Oil Company
P.O. Box 262
Wood, River, Illinois 62095

Attn: Porter Slack, Manager

Re: Charge No. 072800036
COMMISSIONER NORTON

*v.*

SHELL OIL COMPANY

Dear Mr. Slack:

A preliminary study of available data indicates that Shell Oil Company, Wood River Refinery, may be pursuing employment practices which do not afford women and blacks equal opportunity or which have a discriminatory effect. A Commissioner's charge, copy enclosed, has therefore been duly issued.

This does not in any respect constitute a final finding of a violation. Upon the filing of the charge it is the statutory duty of the Commission to conduct a full and impartial investigation for the purpose of determining whether the facts and circumstances afford reasonable cause for the Commission to believe that Shell Oil Company's employment patterns and practices constitute discrimination on the basis of sex and race.

It is the intention of the Commission to conduct its investigation with minimal possible interference with the normal operations of your establishment, consistent with adequately discharging the Commission's statutory duties. To this end, enclosed are a series of written questions from the Commission's investigatory staff. The questions concern those matters which are the subject of investigation.

We are requesting that you review the enclosed material and contact Ms. E. Thomas, Equal Opportunity Supervisor, on or before October 31, 1979, for purposes of arranging a mutually convenient date for discussing the specific format

of your compliance with the enclosed First Data Request. If all or part of your response will be drawn from computerized records, please bring with you to that meeting the answers to questions 29 through 33 and arrange the attendance of a member of your staff who is conversant with the nature and scope of your computer base.

At the end of this meeting, we will establish a mutually agreeable return date for the requested information. The telephone number is (314) 425-4946.

Sincerely,

/s/ _____

W. ED. MANSFIELD
*District Director*

Enclosures: First Data Request
Commissioner's Charge
Notice of Charge

WEM:DLH:sf
Certified No. 4949491

## EXHIBIT F

### FIRST REQUEST FOR INFORMATION
### RESPONDENT *SHELL OIL COMPANY, WOOD RIVER REFINERY*
### CHARGE NUMBER 072800036

The Respondent *Shell Oil Company*, hereafter referred to as *Shell*, is respectfully requested to submit the following information regarding the above mentioned charge.

Please identify each answer by using the number of the question to which it responds, and present the answers in numerical order. Also please identify, separately for each question, and in a manner suitable for use in a request for production of documents, all sources of information (whether human, documentary or other) and all records maintained by the company or other person or organization on which the company relies in answering the questions.

For purposes of answering these questions, the race/ethnic identification is identical to that used by the company in reporting on EEO-1 forms.

This request for information does not necessarily represent the entire body of evidence which we will need to obtain from your organization in order that a proper determination as to the merits of the charge can be made. Please state the name, job title, address and telephone number of the person(s) designated to answer the request on behalf of the company and to whom future inquiries on this matter are to be sent.

It shall be understood that this First Data Request is a continuing request. Thus, should any policy or practice within the scope of these questions change significantly after these questions are answered, you are requested to provide a full discription of the change as soon thereafter as possible.

(Single Establishment Charges)

1. *Identification of Facility*—State the name, address, and telephone number of the facility charged. Indicate any changes in the location of the facility since 1965.

2. *Corporate Structure*—Describe the nature of the business at the charged facility. If the charged facility is part of a multi-establishment employer, give the name and address of the company headquarters office. If the charged facility is part of a conglomerate, give the relationship of the charged facility to the parent company (subsidiary, affiliate, etc.) and the name, address and nature or business of the parent company. Supply a copy of the 1978 annual report or informational brochure, if available.

3. State the name, title, and telephone number of the senior official at the charged facility.

4. State the name, title and telephone number of the official(s) who have had overall responsibility for recruitment, hiring, initial assignment, promotion, training, and termination since 1976. Include the time period when such responsibility was exercised and describe the scope of that responsibility.

5. *Facility Organization*—Supply an organizational chart or list of all sections, departments, divisions, or any other organizational subgroups in the facility, arranged to display the lines of authority. Name the individual in charge of each group or subgroup on the chart or list, and describe the function of each group or subgroup.

6. *Union Affiliation*—For the period 1976 to present, provide the name and address of each labor organization which has represented your employees, the name and address of each business agent or similar representative of each, and the name of any regional, national, or international organization with which each is affiliated. Indicate which of the job titles found in the facility are in the bargaining unit represented by each union. Supply copies of all collective bargaining agreements together with any letters of understanding or other clarifying documents, in effect at any time since 1976. If any labor organization participates in recruitment, promotion, upgrading, transfer, training, or layoff procedure in ways not specified in the contracts, please describe such participation. If apprenticeship programs are conducted with respect to any jobs covered by any collective bargaining agreement, please supply for the period 1/1/77 through 4/1/79, records which show, for appli-

cant or employee eligible for such program, name; race; sex; whether allowed to enter program; date of entry; date of completion, (or current status, e.g. 2d year apprentice); date leaving program, (whether unsuccessful or voluntary); duration of program; entry requirements; reasons for rejection/incompletion.

7. *Summary of Workforce*—For each section, department, division, and/or other subgroup in Question 5, provide a summary listing of all job titles within each such unit. The summary should list official and manager positions in order of authority and other job titles by wage rate or salary level within EEO-1 category. For each job title, include job code, method of compensation (hourly, biweekly, weekly), salary grade or level and range for salaried employees (if there is no established range for the job, provide information on the actual salary range of persons in the job) and wage rate or labor grade for hourly employees, total number of *permanent* full-time employees, and the sex and ethnic identification of those employees. Indicate for each job title the approximate number of vacancies in the last three years and the estimated percentage of openings in the job title that are typically filled by promotion. Provide a separate listing for each year 1979 to 1981 as of 4/1/79.

8. (a) How many temporary employees were employed as of 4/1/79? In what jobs and organizational subgroups (described in Question 5) were they employed?

(b) How many part-time employees were employed as of 4/1/79? In what jobs and organizational subgroups were they employed?

9. *Job Descriptions*—For each job title in Question 7, please provide copies of all job descriptions or other documents which indicate the duties, responsibilities, and components of the job, and the education, skill, experience, and other qualifications that are used as a basis for hiring, promotion, or other employment decisions for that job title.

10. *Affirmative Action Plans*—Attach a copy of the facility's Affirmative Action Plan and supporting data for each year 1976 to 1979 for the charged facility. If there are

none, so state. If Respondent is a government contractor, give the name and address of the compliance office.

11. *EEO-1 Data*—Supply a copy of the facility's EEO-1 Employer Information Report for 1978 and 1979 (we have 70-77).

12. *Copies of Company Documents*—Submit a copy of the following company documents, used at any time in the last two years:

(a) Forms used in the application and hiring process, including, but not limited to applications, applicant evaluation forms and interview forms.

(b) All other personnel-related forms, including but not limited to those used in the transfer, promotion, pay change, training, evaluation or termination of employees.

(c) All manuals of personnel procedures (such as employee handbooks, supervisor's manual, manuals of personnel policies and procedures, and complaint or grievance policies), including sections relating to selection criteria, hiring, promotion, training, transfer, and termination.

(d) All written memoranda which, at least in part, describe Company personnel policies and procedures.

(e) Health, pension and retirement plan, leave regulations and other fringe benefit plans not included in existing collective bargaining contracts, including those relating to maternity benefits.

(f) Salary administration plan, including description of salary groups, labor grades and salary ranges in existence from 1976 to present. Also provide all job analyses, job descriptions, job standards, and any other documents used to set salary or wage levels and rates for each job.

*Personnel Reports*

13. Describe and provide copies of your most recent seniority rosters by department/division; any reports regularly or specially prepared by the company during the past two years on personnel-related activities, such as reports on the number of persons hired, transferred, promoted, or

terminated; reports concerning employee turnover and projections of future hiring; rosters or reports concerning the seniority (date of hire), job classification (current and at hire), sex, race, and/or ethnic status of all minority/female employees reported on your 1978 (or 1979) EEO–1 report; and reports compiled for internal EEO purposes. Describe the records used to prepare the reports, indicating the period of time for which they are maintained and state the name and title of the person responsible for each report.

14. *Selection Process*—Attach a copy of any written criteria or standards used in connection with evaluating candidates for hire, assignment, transfer, promotion, or training which have not been supplied in response to Questions 9 and 12.

15. *Selection Criteria*—State your policy regarding each of the following criteria and indicate for each 1) whether the Company solicits the information and how the information is obtained, 2) whether the Company utilizes the information obtained in its employment decision, 3) the weight given the criterion, and, 4) the jobs for which the criterion is used.

a. Arrest records
b. Conviction records
c. Credit or financial checks
d. Recommendations from previous employers
e. Personal references
f. Military record/Veterans Preference
g. Previous salary or income
h. Marital status
i. Number and ages of children
j. Friends and relatives in the company
k. Height and weight
l. Supervisory recommendations

16–18. Selection Criteria—Tests

16. Identify each paper and pencil or formal performance measure (hereinafter "test") used at any time since 1976 in connection with any hiring, assignment, promotion, transfer, or training decision and identify the job titles for which

it is used and the time period when it was used. Attach a copy of each test and/or rating device.

17. For each test identified in Question 16, provide the following information:

a. The scoring procedures used;

b. The specific manner in which the test results are used in making employment decisions;

c. The acceptable test score or rating for each purpose for which the test is used;

d. The ethnic, racial, and sex breakdown of all persons who took the test, indicating whether they achieved an acceptable score or not;

e. The final disposition as to each candidate;

f. The job title and name of the person responsible for administering the test.

18. For each test identified in Question 16, indicate whether a validation study was done, and if so, provide the following information:

a. The date of each study;

b. The results of each study;

c. The name and address of the person or organization conducting each study; and

d. A copy of each study including all relevant documents and attachments.

19. Special Benefits

a. List all private clubs or other social organizations for which you have purchased membership(s) for the use of employees in the past five years, giving name of club, address, membership qualifications, names and titles of persons in whose name membership is (was) held, if not in name of company.

b. If automobiles are purchased or leased for exclusive use of employees, list all such employees, giving name, title, race/sex/national origin.

20. *Recruitment*—For the period 1976 to date, please state:

a. Whether the Company has utilized newspaper or other media advertising when seeking applicants for

vacant positions; if so, please identify the name and address of each newspaper or other media, the date(s) on which each was so used, and th ejob(s) to be filled on each date;

b. Whether the Company contacted high schools, technical schools, colleges and/or universities for the purpose of encouraging applications or interviewing applicants; if so, please state the name of the institution, the dates of each such contact, the nature and extent of the contact, and the job(s) involved in each occasion;

c. Whether the Company has contacted public or private employment agencies for the purpose of recruiting applicants for its positions; if so, please identify the name and address of each such employment agency, the dates of each contact, the nature and extent of each such contact, and the job(s) involved on each occasion;

d. Whether the company has contacted specialized organizations such as women's or minority groups for the purpose of recruiting applicants; if so please identify the group, dates of the contact(s), and the jobs involved on each occasion;

e. Whether the company utilized incumbent employees as a recruitment source for applicants, if so, describe any bonus or incentive used to encourage employee referrals, and indicate for which jobs this source was used.

f. What other sources, if any, the company has used in seeking applicants; if such other sources have been used, please identify the name and address of each source, the dates of each contact, the nature and extent of each contact and job(s) involved on each occasion.

g. Please append copies of any informational booklets, brochures, or literature distributed during any recruitment programs, or available to some or any applicant for employment.

21. RECRUITMENT - In the chart below listing traditional sources of recruiting applicants, indicate by job level, for the period 1976 to present, what percentage of new hires come from each source. Each vertical column should total 100%. On a separate page, describe the special conditions or limitations or each recruitment source used and any additional comments regarding their use, if any.

| | Off/Mgrs | Prof | Tech | Sales | Clerical | Craft | Oper | Labor | Serv |
|---|---|---|---|---|---|---|---|---|---|
| 1. Self-Referral, walk or write-in | | | | | | | | | |
| 2. Public Employment Agency | | | | | | | | | |
| 3. Private Employment Agency | | | | | | | | | |
| 4. Employee Referral | | | | | | | | | |
| 5. College or University | | | | | | | | | |
| 6. Tech, Vocational, H.S. | | | | | | | | | |
| 7. Media or Ads | | | | | | | | | |
| 8. Minority-Female Organizations | | | | | | | | | |
| 9. Professional Organizations | | | | | | | | | |
| 10. Corporate Recruiting Firms | | | | | | | | | |
| 11. Industry Sources | | | | | | | | | |
| 12. Referral Unions | | | | | | | | | |
| 13. Other | | | | | | | | | |

22. LIST OF PERSONS HIRED - Please provide the following information on all persons hired during the period January 1977 through January 1979 grouped by EEO-1 category and job title and within job title by date of hire.

| EO-1 Category | Job Title and Job Code | Dept | Starting Salary (Level and Amt) or Wage Rate | Status | Date of Hire | Name | Race | Sex | Job Applied for | Date of Appl. | Recruitment Source |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |

Status - Full-time, Part-time, Temporary
Recall, Re-Hire

23. LISTING OF APPLICANTS NOT HIRED

Please provide information on all applicants not hired, including college recruits, grouped by EEO-1 category and then by date of application. (same time period as #22)

| EEO-1 Category | Job Applied For | Date of Appl. | Name of Applicant | Race/Sex | Recruitment Source | DISPOSITION: If not hired, provide reason for rejection<br><br>If application held pending further consideration, state time period retained |
|---|---|---|---|---|---|---|
| | | | | | | |

Recruitment Sources: Self referral, public employment agency, private employment agency, employee referral, college or university, vocational or trade school, media ads, minority or female organizations, referral unions, industry sources, professional organizations, recruiting firms, or other (please state)

24. LIST OF PROMOTIONS - For the period 1/77 through 1/79, list all promotions, grouped by EEO-1 category, and job promoted to and then be date of promotion. Promotion refers to any permanent change from one job to another job with a higher maximum rate of pay. Do not include routine salary increases or upgrades.

| Name of Employee | Race/Sex | Date of Promotion | Job Promoted To | | | | Previous Job | Date of Hire |
|---|---|---|---|---|---|---|---|---|
| | | | EEO-1 Category | Job Title & Job Code | Dept | Salary (level and Amt) or Wage Rate | EEO-1 Category, Job Title, Dept. Salary (Level & Amt) or Wage Rate, Years in this title | |
| | | | | | | | | |

25. SPECIAL PROGRAMS - Attach description of each program, including size, cycling, procedure for informing employees of program, application procedures, eligibility, curriculum length, placement following completion as appropriate.

| Training Programs (by name of program. List all groups during past 3 years | Total ✓ | | | Black ✓ | | SSA | | Other Min. | | White | | Dates of Program | Describe qualifications for selection, & job(s) for which participants are trained. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | All | Male | Female | Male | Female | Male | Female | Male | Female | Male | Female | | |
| | | | | | | | | | | | | | |
| Tuition Refund (Report usage in past 3 years | | | | | | | | | | | | | |
| Other | | | | | | | | | | | | | |

26. LISTING OF SEPARATIONS - List all separations for the period 2/1/78 through 1/31/79, grouped by EEO-1 category and job title and then by date of separtion.

| JOB SEPARATED FROM | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| EO-1 ategory | Job Title and Job Code | Dept. | Salary | Date of Separation | Name | Race | Sex | Date of Hire | Reason for Separation |
| | | | | | | | | | |

27. SUMMARY OF SEPARATIONS - For the period 2/1/78 through 1/31/79, provide information on all separations grouped by EEO-1 category and Job Title.

| EEO-1 Category | Job Title | Total Separations | Male | Female | Black | | Hispanic | | Other Minority | | White | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Male | Female | Male | Female | Male | Female | Male | Female |
| | | | | | | | | | | | | |

28. *Records Maintained*

a. Describe all records, documents, and reports that are maintained by the facility or maintained elsewhere pertaining to the facility concerning applicants and hires, including but not limited to such records as applicant logs, applications, interview records, initial assignment records, and summary reports of applicants and/or hires. For each type of record describe all the information on the record and whether the record includes race and/or sex-identification.

b. Describe all documents, records, and reports maintained by the facility or maintained elsewhere pertaining to the facility which reflect summarized and/or individual information on:

1. Persons who sought promotion or transfer
2. Persons selected for promotion or transfer
3. Reasons for selection or non-selection of persons for promotion or transfer
4. Persons identified by the company as "promotable"

c. Describe all documents, records, and reports maintained by the facility or maintained elsewhere pertaining to the facility which reflect information on employee personnel history including but not limited to individual job, salary, location or organizational changes, status changes, and reasons for separation.

29-33. cf2 Computerized Data

29. State whether Respondent currently maintains or has maintained, or any other entity currently maintains, any computerized file or files which contain any of Respondent's personnel information, such as personnel, payroll, seniority, work history, etc. If so, identify and provide the following information separately for each such file:

(a) The name of the file and the date Respondent started using the file and the date that the use of the file was discontinued;

(b) The name, model number, configuration, and location of the computer on which the file is run;

(c) Whether the file contains information on all of Respondent's employees;

(d) If not, the categories of employees on which the file contains information;

(e) Whether the file contains information on inactive and/or terminated employees and for how long such employees are retained on the file;

(f) The time and method by which the file is purged of inactive and/or terminated employees; and state how, where, and on what medium the data as to the inactive and/or terminated employee is then stored;

(g) The medium on which the file is kept (e.g. tape, disk, cards, etc.);

(h) The number of types of records on the file; the name of each type; the minimum and maximum number of each type; and when and how each type of record is generated;

(i) For each type of record, the name and description of each field on the record;

(j) The identity and description of all codes associated with each field (e.g. termination codes, department codes, etc.) described in the answer to subparagraph (9);

(k) The name and description of each report which is regularly generated by the system, and the name, title and employer of person(s) having custody of each. Provide a sample of one or more pages of each of the reports.

30. Provide the following information, separately, for each computer file:

(a) The intervals at which copies are generated or the file preserved (e.g., yearly, quarterly, monthly, etc.);

(b) The date on which copies began to be kept or files preserved;

(c) The date of each copy or preserved file.

31. List the name of each generalized information retrieval program and/or report generator (e.g., Mark IV, Score,

etc.) including, but not limited to, commercially available programs/packages, and the name of the company which developed such program.

32. State whether any of the data requested in Questions 7, 13, 21, 22, 23, 24, 25, 26, and 27 is available in machine-readable form. If so, indicate which items in each question are available, and for what time period.

33. State with respect to the person(s) answering item 29-32 name, employer, business address, occupation and job title, and length of time in current position.

You are also invited to provide us with a statement of position or other evidence concerning the allegations made in the charge.

Please be informed that Commission regulations, 29 CFR Section 1602.14, require that all records relevant to this charge be preserved until final disposition of the charge, as defined in Section 1602.14.

Please be informed also that 18 USC Section 1001 provides felony criminal penalties for false, fictitious or fraudulent statements or representations, or concealment or cover up of material facts, or making or using false writing document, in any matter within the jurisdiction of any agency of the United States.

## EXHIBIT G—CORRESPONDENCE

November 30, 1979

Shell Oil Company
P. O. Box 262
Wood River, Illinois 62095

Attn: Roger Rice
Administrative Superintendent

Re: Charge No. 072800036
Commissioner Norton

*v.*

Shell Oil Co.

Dear Mr. Rice:

This will confirm our agreement at Wednesday's conference, to meet again on January 15, to discuss the most feasible means for you to respond to certain areas of the First Data Request.

Production of certain data and compilations enumerated in the First Data Request could be burdensome if not retrievable by computer. To determine the least burdensome means of producing the required data, it is imperative, therefore, that you respond substantively to questions 29 through 33 in the Data Request. Alternate responses to the other questions of the Data Request will be dependent on the information available.

Preparation for our meeting in January will be facilitated if you will provide, in advance, responses to questions 1–5 and 9-11.

If you have any questions regarding this matter, please contact me at 314/425-4875. Thank you for your cooperation.

Very truly yours,

TERENCE W. MARLOW
*Equal Opportunity Specialist*
*(Employment)*

SHELL OIL COMPANY

P.O. Box 262
Wood River, Illinois 62095
January 17, 1980

Subject: Charge No. 072800036
Commissioner Norton
*v.*
*Shell Oil Company*

*Mr. Terence W. Marlow*
*Equal Opportunity Specialist*
*Equal Employment Opportunity Commission*
*1601 Olive Street*
*St. Louis, Missouri 63103*

*Dear. Mr. Marlow:*

*Further to our recent telephone discussions, as you know, the oil industry is currently involved in a nation-wide labor dispute which involves work stoppages in almost all refining locations. As I indicated to you, at our Wood River Refinery we are involved in continuing negotiations toward a settlement. These negotiations have, unfortunately, prevented me from being able to meet with you on January 15 as originally planned. As soon as our situation clarifies, I will be in touch with you so that we can arrange a mutually convenient date to discuss the Commissioner's charge pending against Shell Oil Company's Wood River Refinery.*

*Please feel free to give me a call should you have any questions.*

*Very truly yours,*

/s/ _____
R.B. RICE
*Administrative Superintendent*

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1601 Olive Street
St., Louis, Missouri 63103

January 23, 1980

Shell Oil Company
ATTN: Roger Rice
Administrative Superintendent
P. O. Box 262
Wood River, Illinois 62095

Re: Charge No. 072800036
Commissioner Norton
*v.*
Shell Oil Company,
Wood River Refinery

Dear Mr. Rice:

With respect to the referenced charge, the attached data request was received by you on October 29, 1978. At our meeting of November 28, it was agreed that a substantive response to major items of that request would be supplied on or before January 15, 1980, and that full compliance would be expected within a reasonable time thereafter.

We are cognizant of the fact that your labor negotiations have been continuing for some months, and you are unable to foresee when the situation might change. The Commission, however, must proceed with its investigation in a timely manner, and, to date, we have received no substantive response to any of the items requested.

Accordingly, we direct your attention to Section 710 of Title VII of the Civil Rights Act of 1964, as amended, under which this agency is empowered to subpoena evidence necessary to its investigations.

It is our hope we will receive the requested information, and that it will, therefore, be unnecessary for us to resort to the subpoena process. However, unless the information enumerated in the aforementioned attached data request is received by February 25, 1980, we will be compelled to proceed under Section 710.

If you have any questions regarding this matter, please call me at 314/425-4875.

Very truly yours,

/s/

TERRENCE W. MARLOW
*Equal Opportunity Specialist*
*(Employment)*

072800036 T. MARLOW

PS Form 3811, Jan. 1979

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered ..... ¢
- ☒ Show to whom, date and address of delivery ..... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered ..... ¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery $

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Shell Oil Co.
ATTN: Roger Rice, Admin. Supt.
P.O. Box 262
Wood River, IL 62095

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | 4949488 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☒ Authorized agent

X Shell B B

4. DATE OF DELIVERY: 1-24-80

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

072800036 T. MARLOW

1/23/80 072800036

☆GPO : 1979-300-499

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.
- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

RETURN TO

(Name of Sender)
U.S. EQUAL OPPORTUNITY COMMISSION
ST. LOUIS DISTRICT OFFICE
(Street or P.O. Box) 1 RCE1
ST. LOUIS, MISSOURI 63103
(City, State, and ZIP Code)

P03 4349488

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO Shell Oil Co.
ATTN: Roger Rice, Admin Supt
STREET AND NO. P.O. Box 262
P.O. STATE AND ZIP CODE Wood River, IL 62095

| | |
|---|---|
| POSTAGE | $ |
| CERTIFIED FEE | ¢ |
| SPECIAL DELIVERY | ¢ |
| RESTRICTED DELIVERY | ¢ |
| RETURN RECEIPT SERVICE | ¢ |
| | ¢ |
| | ¢ |
| TOTAL POSTAGE AND FEES | $ |

CONSULT POSTMASTER FOR FEES
OPTIONAL SERVICES

POSTMARK OR DATE
072800036 T. MARLOW
subpoena threat. 1st data request encl again
1/23/80 sf

PS Form 3800, Apr. 1976

SHELL OIL COMPANY
P. O. Box 262
Wood River, Illinois 62095

March 7, 1980

Subject: Charge No. 072800036
Shell Oil Company
Wood River Refinery

*CERTIFIED MAIL*
*RETURN RECEIPT REQUESTED*

Mr. W. Ed Mansfield
District Director
Equal Employment Opportunity Commission
1601 Olive Street
St. Louis, Missouri 63103

Dear Mr. Mansfield:

This is in response to your letter of October 26, 1979, and our several conversations with your staff concerning your request for a substantive response to the above-mentioned charge against Shell's Wood River Refinery. We must again state our concern over this charge as we do not believe that conditions at the Wood River Refinery justify a Commissioner's Charge. Indeed, in our meeting with representatives from your systemic unit, they were unable to provide any specific information whatsoever about the basis for this charge.

Over the past decade, Wood River Refinery has reduced its work force by more than 500 employees, approximately 23%, while increasing female and black representation significantly (Attachment I). Bottom line results reflect that the Refinery is in fact in a favorable position in reference to availability in the appropriate labor market (Attachment II). Of importance in this respect is the fact there have been no race or sex discrimination charges filed against our facility in the last six years. Only two such charges have been filed in the last decade and both of those charges were dismissed. This record was achieved with a reduction of the work force and a multitude of employee transactions over

the same period. Our record of equal opportunity is clearly not the profile anticipated for a Commissioner's Charge.

To asist in your understanding of the Wood River Refinery and its organizational structure, we have attached the following:

Brochure (Attachment III)
Organization Chart (Attachment IV)
Recent Contracts (Attachments V, VI, VII, VIII, IX)

A possible misunderstanding of the Wood River Refinery's equal opportunity posture could come from utilizing the wrong labor market area when comparing the work force utilization of blacks and females to that of the appropriate labor area. The federal government has already recognized and agreed that the appropriate local labor market for the Refinery is the multi-county area depicted on the attached map (Attachment X)—not the "bottom line" weighted representation or availability for individuals with appropriate skills in the labor force in those counties compared to the Refinery's December 31, 1979, summary work force statistics (Attachment XI). This procedure, which has not only been approved previously by the government but has also been endorsed in various court rulings, is based on a study of applicants' residence counties. Again the statistics reflect that Shell's Wood River Refinery is free of systemic discrimination against blacks and females.

Included on Attachment XI is a summary showing utilization of blacks and females in the work force who have been employed since July 1965. These should also be compared to the weighted representation or availability figures for individuals with appropriate skills. The work force representation for blacks on 12.3% and females of 9.8% compared to representation in the labor market reflect the nondiscriminatory effect of the Refinery's selection procedures.

As to the broad general allegations stated in the charge, the following will demonstrate that they are not consistent with the facts.

Hiring rates for females and blacks in 1979 exceeded the availability rates in the appropriate labor markets—blacks 14.8% compared to 4.7% and females 16.0% compared to

8.0% (Attachment XII). The combined 1977, 1978, and 1979 employment rates reflect the same positive results—11.1% blacks and 10.9% females (Attachment XIII). These general figures show that the total scope of hiring at Wood River has been clear of adverse impact against blacks and females.

Complete records of training are not available. Additionally, training records could not accurately capture the amount and nature of on-the-job training. However, promotion is generally a result of adequate training. In 1979 blacks and females participated in 11.1% and 10.2%, respectively, of the total Refinery promotions (Attachment XIV). Also in the combined years of 1977, 1978, and 1979 again there was the same positive result of 12.4% black and 10.6% female participation (Attachment XV). These rates are in excess of the black and female representation in the internal work force.

Terminations of blacks and females in 1979 were 2.1% and 3.2%, respectively. These rates are well below their representation in our work force as are the combined statistics for 1977, 1978, and 1979, which reflect that black terminations were but 2.6% of the total and female terminations 5.1% (Attachment XVI). These figures also show there was no adverse impact on blacks and females.

The promotions and hires combined for 1979 included black participation of 12% and females 11.7%. Over the period 1977, 1978, and 1979, blacks had a participation rate of 12.0% and females 10.7% (Attachment XVII). These positive figures compared to the low termination figures reflect the affirmative direction in which the Wood River Refinery is moving.

The foregoing amply demonstrates that upon reviewing the relevant facts, prohibitive discrimination has not been practiced at Shell Oil Company's Wood River Refinery and the charge that has been issued is not supportable by the facts.

As discussed in the November 28, 1980, meeting in the St. Louis office, we are again requesting that our following questions be answered and information be furnished.

—Why was a charge filed against the Wood River Refinery in light of our favorable profile and record?

—What is the basis for the charge?

—What information other than EEO-1 data was available and utilized in deciding to bring the charge?

—What pertinent information which the EEOC might have would clarify or give meaning to why we have been charged?

—Are there specifics to this charge? If so, what are they?

—Could we have a copy of EEOC Form 155, the *Preinvestigative Charge Analysis Form*, or the information contained on that form?

—Could we have the portion of the *Employment Analysis Report Profile (EARP)* pertaining to the Shell Oil Company Wood River Refinery or the information contained therein?

—It was agreed that the EEOC would give us the names of SMSA categories (industry and job codes) with which we were compared and the date of the data.

—It is our understanding that a charge shall be filed within 180 days after an alleged unlawful employment practice occurred and a notice of the charge including the date, place, and circumstances of the alleged unlawful employment practice shall be served upon the person against whom the charge is made. Can we assume that this 180-day limitation puts some bounds on this charge? If so, what dates are involved?

Thus after examining the general charge against Shell (Attachment XVIII), it is clear that we need and are entitled to more information about the charge than we have received should the Commission determine it is necessary to proceed.

In conclusion, please understand that we are most distressed by having this charge filed against us. It raises questions of fundamental fairness to be accused of violating

the law without being given any more specifics concerning the allegation than have been provided in this matter. As you are aware, the Commission requires individuals who claim there has been discrimination against them to provide a statement of each specific harm that the person has suffered and the date on which each harm occurred, along with a statement specifying the act, policy, or practice for each alleged harm that is unlawful and a statement of the facts which lead the person claiming to be aggrieved to believe that the act, policy, or practice is discriminatory. Information of this nature is needed to understand this charge.

To summarize the information submitted the facts reflect that, contrary to the charge, Shell's employee selection procedures have had no adverse effect against either blacks or females. In fact, there have been positive affirmative results from these procedures. We can also assure you that, as the results indicate, Shell bases employment decisions on valid, job-related criteria. Shell's bottom line statistics reflect that there is no violation of the Civil Rights Act of 1964 as amended on a systemic basis. Should there be an individual charge that we should be aware of, we would readily be prepared to investigate such a charge and evaluate the merits. Should no individual charge exist, the facts reflect that this Commissioner's Charge should be withdrawn.

Very truly yours,

/s/

R. B. RICE
*Administrative Superintendent*

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1601 Olive Street
St. Louis, Missouri 63103

March 21, 1980

R. B. Rice
Administrative Superintendent
Shell Oil Company
Wood River Refinery
P.O. Box 262
Wood River, Illinois 62095

Re: *Norton v. Shell Oil co.—Wood River Refinery*
#072800036

Dear Mr. Rice:

I am in receipt of your letter of March 7, 1980 and take note of your position regarding your achievements in the area of equal employment opportunity for blacks and women.

As to your concerns about the propriety of, rationale for, and analysis supporting the issuance of this Commissioner charge, I believe my staff informed you that to answer questions which probe the agency's decision making processes violates agency privilege. As was done in your first meeting with my staff, I refer you to the published standards for the selection of systemic respondents contained in Section 16.2 of the EEOC Compliance Manual, and to the published authority for the issuance of Commissioner charges, contained in the Commission's Procedural Regulations, 29 C.F.R. Section 1601.11. As was also explained to you in your first meeting with my staff, EEOC form 155 is an internal processing document not subject to disclosure.

As to your question about the 180 day limitation, I would reiterate my staff's response that the investigation of a charge may properly include data from time periods beyond the six months preceding issuance of a charge. To the extent that you wish to raise the six month limitation as a defense to providing certain information, you may certainly

do so. I am confident my staff will respond to your concerns as they arise.

At this stage, however, we have received little or no evidence responsive to our requests. Consequently, we are unable to evaluate your defenses as to proper labor market availability for instance, because those defenses are prematurely raised. The charge herein has been properly issued. Your assurances to the contrary notwithstanding, we are still obligated to conduct an investigation of the merits of the charge.

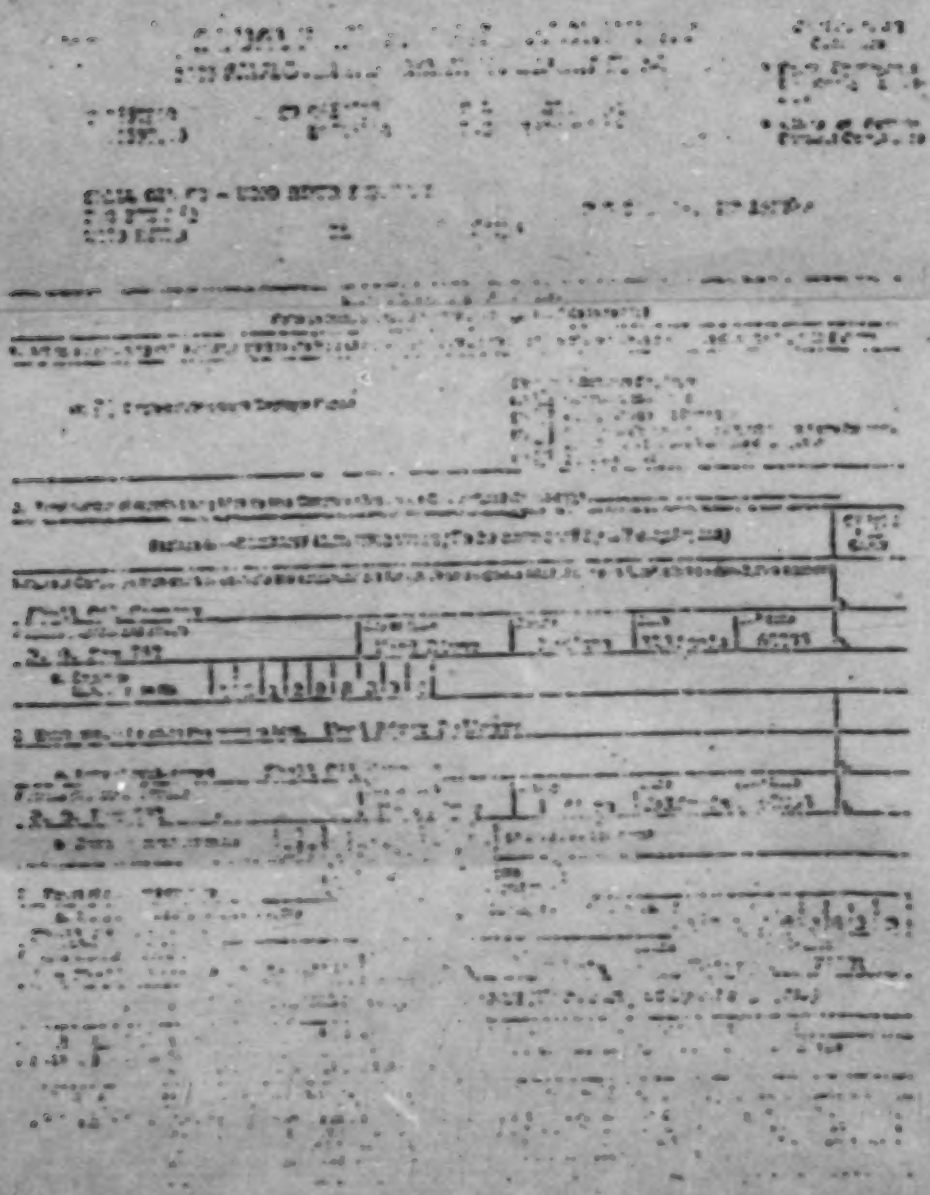
Further correspondence from my staff concerning the information requested last October, 1979, but not received, will follow.

Copies of EEO-1 and EARP data are enclosed.

Sincerely.

/s/

W. ED MANSFIELD
*District Director*



Best Copy Available

| Job Categories | All employees in establishment | | | Male | | | | Female | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total employees (Col. 2 + 3) (1) | Total male (including Hispanic) (2) | Total female (including Hispanic) (3) | Negro (4) | Oriental (5) | American Indian (6) | Spanish surnamed American (7) | Negro (8) | Oriental (9) | American Indian (10) | Spanish surnamed American (11) |
| Officials and managers | 253 | 253 | - | - | 1 | - | 2 | - | - | - | |
| Professionals | 192 | 188 | 4 | 5 | 2 | - | 1 | - | - | - | |
| Technicians | 148 | 147 | 1 | 4 | 1 | - | - | - | - | - | |
| Sales workers | - | - | - | - | - | - | - | - | - | - | |
| Office and clerical | 112 | 37 | 75 | 1 | - | - | - | 4 | - | - | |
| Craftsmen (Skilled) | 840 | 840 | - | 9 | - | - | 1 | - | - | - | |
| Operatives (Semi-skilled) | 371 | 371 | - | 20 | - | - | 2 | - | - | - | |
| Laborers (Unskilled) | 77 | 77 | - | 11 | - | - | - | - | - | - | |
| Service workers | 29 | 29 | - | - | - | - | - | - | - | - | |
| TOTAL → | 2,022 | 1,942 | 80 | 50 | 4 | - | 6 | 4 | - | - | |
| Total employment reported in previous EEO-1 report | 2,100 | 2,019 | 81 | 47 | 1 | - | 6 | 3 | - | - | |

*(The trainees below should also be included in the figures for the appropriate occupational categories above)*

| | | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Apprentices | Enter date of program | - | - | - | - | - | - | - | - | - | - | - |
| | Employees | 13 | 13 | - | - | - | - | - | - | - | - | - |

* Alaska Native Eskimos and Aleuts with American Indians

NOTE: On consolidated report, skip questions 2-6 and Section E.
Was race or ethnic group information as to race or ethnic group in Section D obtained?
1 ☒ Visual Survey
2 ☐ Employment Record
3 ☐ Other—Specify: _____
Date of payroll period used—
12-31-72

4. Pay period of last report submitted for this establishment
12-31-71

5. Does this establishment employ apprentices?
This year? 1 ☒ Yes 2 ☐ No
Last year? 1 ☒ Yes 2 ☐ No

## Section E—ESTABLISHMENT INFORMATION

1. Is the location of the establishment the same as that reported last year?
1 ☒ Yes 2 ☐ No 3 ☐ Did not report last year 4 ☐ Reported on consolidated basis

2. Is the major business activity at this establishment the same as that reported last year?
1 ☒ Yes 2 ☐ No 3 ☐ No report last year 4 ☐ Reported on combined basis

OFFICE USE ONLY

What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, life insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.

Petroleum Refining

## Section F—REMARKS

Use this item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units, and other pertinent information.

## Section G—CERTIFICATION (See instructions G)

1 ☐ All data in this report are prepared in accordance with the instructions (with an consolidated entry)
2 ☐ This report is accurate and complete to the best of my knowledge

Name of person completing form: W. A. Wallace
Title: Refinery Manager
Signature: E. M. Walker
Date: January 26, 197

EMPLOYER INFORMATION REPORT EEO-1

ATTACH

1972 5064620 6 5-4 SIC-2911 Contract Compl

CO=0867878 U=0867900 EI=131299890 4

SHELL OIL CO-WOOD RIVER REFINERY OH691

PO BOX 262
WOOD RIVER IL 62095 0 9067777

**Section A - TYPE OF REPORT**

**Refer to instructions for number and types of reports to be filed.**

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX).

(1) ☐ Single-establishment Employer Report

Multi-establishment Employer:
(2) ☐ Consolidated Report
(3) ☐ Headquarters Unit Report
(4) ☒ Individual Establishment Report (submit one for each establishment with 25 or more employees)
(5) ☐ Special Report

2. Total number of reports being filed by this Company (Answer on Consolidated Report only)

**Section B - COMPANY IDENTIFICATION** *(To be answered by all employers)*

OFFICE USE ONLY

1. Name of Company which owns or controls the establishment for which this report is filed (if same as label, skip to item 2, this section) a.

| Address (Number and street) | City or town | County | State | ZIP code | b. |
|---|---|---|---|---|---|
| | | | | | |

b. Employer Identification No.

2. Establishment for which this report is filed. Wood River Refinery

a. Name of establishment Shell Oil Company

| Address (Number and street) | City or town | County | State | ZIP Code | d. |
|---|---|---|---|---|---|
| P. O. Box 262 | Wood River | Madison | Illinois | 62095 | |

b. Employer Identification No. (If same as label, skip)

(Multi-establishment Employers: Answer on Consolidated Report only)

3. Parent or affiliated company

a. Name of parent or affiliated company b. Employer Identification No

| Address (Number and street) | City or town | County | State | ZIP code |
|---|---|---|---|---|
| | | | | |

**Section C - EMPLOYERS WHO ARE REQUIRED TO FILE** *(To be answered by all employers)*

☒ Yes ☐ No 1. Does the entire company have at least 100 employees in the payroll period for which you are reporting?

☒ Yes ☐ No 2. Is your company affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 100 or more?

NOTE: If the answer is NO to BOTH questions, skip to Section D; otherwise complete ENTIRE form.

☒ Yes ☐ No 3. Does the company or any of its establishments (a) have a prime contract with any agency of the Federal Government, a Federally-assisted construction contract, or a subcontract on any such under any prime Government contract, amounting to more than $10,000, or (b) serve as a depositary of Federal Government funds, or (c) serve as an issuing and paying agent of U.S. Savings Bonds and Notes, or (d) hold a Federal Government bill of lading in any amount?

| Job Categories — Appendix 1A for definitions | NUMBER OF EMPLOYEES IN ESTABLISHMENT: Total Employees (Including Minorities) (1) | Total Male (Including Minorities) (2) | Total Female (Including Minorities) (3) | MALE: Negro (4) | Oriental (5) | American Indian (6) | Spanish Surnamed American (7) | FEMALE: Negro (8) | Oriental (9) | American Indian (10) | Spanish Surnamed American (11) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Officials and managers | 254 | 254 | - | - | 1 | - | 2 | - | - | - | - |
| Professionals | 191 | 187 | 4 | 5 | 2 | - | 1 | - | - | - | - |
| Technicians | 147 | 147 | - | 4 | 1 | - | - | - | - | - | - |
| Sales workers | - | - | - | - | - | - | - | - | - | - | - |
| Office and clerical | 112 | 36 | 76 | 1 | - | - | - | 4 | - | - | - |
| Craftsmen (Skilled) | 854 | 854 | - | 9 | - | - | 1 | - | - | - | - |
| Operatives (Semi-skilled) | 380 | 380 | - | 20 | - | - | 2 | - | - | - | - |
| Laborers (Unskilled) | 69 | 69 | - | 8 | - | - | - | - | - | - | - |
| Service workers | 31 | 31 | - | 2 | - | - | - | - | - | - | - |
| TOTAL → | 2,038 | 1,958 | 80 | 49 | 4 | - | 6 | 4 | - | - | - |
| Total employment reported in previous EEO-1 report | 2,100 | 2,019 | 81 | 47 | 1 | - | 6 | 3 | - | - | - |

*(The boxes below should also be included in the figures for the appropriate occupational categories above)*

| | | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Apprentices (Enter-ed above) | Negro | - | - | - | - | - | - | - | - | - | - | - |
| | Oriental | - | - | - | - | - | - | - | - | - | - | - |
| | American Indian | - | - | - | - | - | - | - | - | - | - | - |
| | Spanish Surnamed American | - | - | - | - | - | - | - | - | - | - | - |
| | Other* | 13 | 13 | - | - | - | - | - | - | - | - | - |

*Other includes Eskimos and Aleuts with American Indians

1. NOTE: On consolidated report, skip questions 2-6 and Section E.
2. How was information as to race or ethnic group in Section D obtained?
   1 ☒ Visual Survey
   2 ☐ Employment Record
   3 ☐ Other—Specify _____
3. Dates of payroll period used—
   11-30-72
4. Pay period of last report submitted for this establishment
   12-31-71
5. Does this establishment employ apprentices?
   This year? 1 ☒ Yes 2 ☐ No
   Last year? 1 ☒ Yes 2 ☐ No

## Section E—ESTABLISHMENT INFORMATION

1. Is the location of the establishment the same as that reported last year?
   1 ☒ Yes 2 ☐ No ☐ 3 ☐ Did not report last year 4 ☐ Reported on combined basis
2. Is the major business activity at this establishment the same as that reported last year?
   1 ☒ Yes 2 ☐ No 3 ☐ No report last year 4 ☐ Reported on combined basis

OFFICE USE ONLY

3. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale electrical supplies, life insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.

Petroleum Refining

a.

## Section F—REMARKS

Use this item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units, and other pertinent information.

## Section G—CERTIFICATION (See instructions G)

Check one
1. ☐ All reports are accurate and were prepared in accordance with the instructions (Check on consolidated only)
2. ☒ This report is accurate and was prepared in accordance with the instructions.

| Name of Authorized Official | Title | Signature | Date |
|---|---|---|---|
| | | | |

| Name of person to contact regarding this report (Type or print) | Address (Number and street) | | | | |
|---|---|---|---|---|---|
| P. E. Block | P. O. Box 262 | | | | |
| Date | City and State | ZIP code | Telephone Area Code | Number | Extension |
| | | | 618 | 254-7371 | 495 |

(December 31, 1971)

SIC=291

CO=0867878 U=0867900 EI=131299690 S=4

SHELL OIL CO-WOOD RIVER REFINERY
PO BOX 262
WOOD RIVER IL 62095

3 OF 125

4-9041866

**Section A—TYPE OF REPORT**

Refer to instructions for number and types of reports to be filed.

Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX).

(1) ☐ Single-establishment Employer Report

Multi-establishment Employer:
(2) ☐ Consolidated Report
(3) ☐ Headquarters Unit Report
(4) ☒ Individual Establishment Report (submit one for each establishment with 25 or more employees)
(5) ☐ Special Report

Total number of reports being filed by this Company (Answer on Consolidated Report only) _____

**Section B—COMPANY IDENTIFICATION** *(To be answered by all employers)*

OFFICE USE ONLY

Parent Company which owns or controls the establishment for which this report is filed (If same as label, skip to Item 2, this section)

a. _____

Address (Number and street) | City or town | County | State | ZIP code

b. _____

b. Employer Identification No.

c.

2. Establishment for which this report is filed. Wood River Refinery

a. Name of establishment Shell Oil Company

Address (Number and street) P. O. Box 262 | City or town Wood River | County Madison | State Illinois | ZIP Code 62095

d.

b. Employer Identification No. _____ (If same as label, skip.)

3. Parent or affiliated company (Multi-establishment Employers: Answer on Consolidated Report only)

a. Name of parent or affiliated company _____ b. Employer Identification No. _____

Address (Number and street) | City or town | County | State | ZIP code

**Section C—EMPLOYERS WHO ARE REQUIRED TO FILE** *(To be answered by all employers)*

Yes ☐ No 1. Does the entire company have at least 100 employees in the payroll period for which you are reporting?

Yes ☐ No 2. Is your company affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 100 or more?

NOTE: If the answer is NO to 2 or 3, skip to Section D; otherwise complete the rest.

Yes ☐ No 3. Does the company or any of its establishments (a) have a prime contract with any agency of the Federal Government, a Federally-assisted construction contract, or first-tier subcontract under any prime Government contract, exceeding in value $10,000; or (b) serve as a depository of Federal funds, or (c) serve as an issuing and paying agent of U.S. Savings Bonds and Notes; or (d) act as a Federal Government bill of lading agent?

Establishment—Report all persons [illegible] 7, or part-time employees, including apprentices, on the pay [illegible] as set forth in the instructions. Enter appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros. Lines 1, 2, and 3, include ALL employees in the establishment including those in minority groups.

| | TOTAL EMPLOYEES IN ESTABLISHMENT | | | MINORITY GROUP EMPLOYEES (See Appendix B to Guidelines) | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | MALE | | | | FEMALE | | | |
| | Total Employees including Minorities (1) | Total White (Not of Hispanic Origin) including Minorities (2) | Total Public Including Minorities (3) | Negro (4) | Oriental (5) | American Indian (6) | Spanish Surnamed American (7) | Negro (8) | Oriental (9) | American Indian (10) | Spanish Surnamed American (11) |
| [illegible] | 266 | 266 | - | - | - | - | 2 | - | - | - | - |
| [illegible] | 202 | 198 | 4 | 5 | 1 | - | 1 | - | - | - | - |
| [illegible] | 146 | 146 | - | 3 | - | - | - | - | - | - | - |
| [illegible] | - | - | - | - | - | - | - | - | - | - | - |
| Clerical | 116 | 39 | 77 | 3 | - | - | - | 3 | - | - | - |
| [illegible] | 894 | 894 | - | 9 | - | - | 1 | - | - | - | - |
| [illegible] | 375 | 375 | - | 19 | - | - | 2 | - | - | - | - |
| [illegible] | 72 | 72 | - | 8 | - | - | - | - | - | - | - |
| [illegible] | 29 | 29 | - | - | - | - | - | - | - | - | - |
| TOTAL→ | 2,100 | 2,019 | 81 | 47 | 1 | - | 6 | 3 | - | - | - |
| Previous report (EEO-1 report) | 2,113 | 2,033 | 80 | 48 | 1 | - | 6 | 3 | - | - | - |

(The trainees below should also be included in the figures for the appropriate occupational categories above)

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| White collar | - | - | - | - | - | - | - | - | - | - | - |
| Production | 18 | 18 | - | - | - | - | - | - | - | - | - |

a. Include Eskimos and Aleuts with American Indians

b. On consolidated report, skip questions 2-6 and Section E.

c. Is information as to race or ethnic group in Section D based on?
Visual Survey ☐ 3 ☐ Other—Specify _____
Employment Record
Name of payroll period used—
2-31-71

d. Pay period of last report submitted for this establishment
9-30-72

e. Does this establishment employ apprentices?
This year? 1 ☑ Yes 2 ☐ No
Last year? 1 ☒ Yes 2 ☐ No

## Section E—ESTABLISHMENT INFORMATION

Is the location of the establishment the same as that reported last year?
1 ☐ Yes 2 ☐ No 3 ☐ Did not report last year 4 ☐ Reported on combined basis

Is the major activity of this establishment the same as that reported last year?
1 ☒ Yes 2 ☐ No 3 ☐ No report last year 4 ☐ Reported on combined basis

OFFICE USE ONLY

What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, life insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.

Petroleum Refining

a.

## Section F—REMARKS

Use this item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units, and other pertinent information.

## Section G—CERTIFICATION (See Instructions G)

1. ☐ All reports are accurate and were prepared in accordance with the instructions. (Check on consolidated only)
2. ☒ This report is accurate and was prepared in accordance with the instructions.

| Authorized Official | Title | Signature | Date |
|---|---|---|---|
| A. Ballman | Refinery Manager | E. Ballman | February 28, 1972 |

| Person to contact regarding this report (Type or print) | Address (Number and street) | City and State | ZIP code | Telephone Area Code | Number | Extension |
|---|---|---|---|---|---|---|
| R. Stark | P. O. Box 80 | | | | | |

[illegible] INFORMATION - UNAUTHORIZED DISCLOSURE PROHIBITED

1976 EEO-1 EMPLOYMENT ANALYSIS REPORT PROGRAM (EARP) PAGE 3,644

[illegible] WOOD RIVER REFIN PO BOX 262 — WOOD RIVER — IL MADISON — SHELL OIL COMPANY

[illegible] ( 7060) ST. LOUIS, MO-IL — HDQ ( 086787) STATUS (4) UNIT ( 086793) E.I.NUMBER ( 1?1299690) 052

| | TOTAL (EMPLOYMENT) | WHITE COLLAR: TOTAL | OFFICIALS & MNGRS | PROFESSIONALS | TECHNICIANS | SALES WORKERS | OFFICE & CLER WKRS | BLUE COLLAR: TOTAL | CRAFT WORKERS | OPERATIVES | LABORERS | SERVICE WORKERS |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| T | 1,731 | 522 | 241 | 102 | 83 | 0 | 96 | 1,187 | 763 | 348 | 76 | 22 |
| [illegible] | 1,665 | 491 | 241 | 96 | 82 | 0 | 32 | 1,172 | 763 | 335 | 74 | 22 |
| [illegible] | 66 | 31 | 0 | 6 | 1 | 0 | 64 | 15 | 0 | 13 | 2 | 0 |
| [illegible] | 88 | 17 | 1 | 6 | 3 | 0 | 7 | 70 | 11 | 44 | 13 | 1 |
| [illegible] | 79 | 11 | 1 | 6 | 3 | 0 | 1 | 67 | 11 | 42 | 14 | 1 |
| [illegible] | 9 | 6 | 0 | 0 | 0 | 0 | 6 | 3 | 0 | 2 | 1 | 0 |
| [illegible] | 5 | 1 | 1 | 0 | 0 | 0 | 0 | 4 | 2 | 2 | 0 | 0 |
| [illegible] | 5 | 1 | 1 | 0 | 0 | 0 | 0 | 4 | 2 | 2 | 0 | 0 |
| [illegible] | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| [illegible] | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| [illegible] | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| [illegible] | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| [illegible] | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| [illegible] | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| [illegible] | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1601 Olive Street
St. Louis, Missouri 63103

April 11, 1980

Shell Oil Company
R.B. Rice, Administrative Superintendent
P.O. Box 262
Wood River, IL 62095

Dear Mr. Rice:

This letter is in further response to your letter of March 7, 1980, and Attachments thereto. First, we wish to acknowledge our receipt of the following submissions:

1. Table showing total work force comparison, 1969-1979 (Attachment I);
2. Table comparing total work force with Labor Market Data, 1979 (Attachment II);
3. Brochure describing Wood River Refinery (Attachment III);
4. Organization charts dated January 1, 1979 (Attachment IV);
5. Collective Bargaining Agreements dated January 8, 1979, between Shell Oil Company and Boilermakers Local Lodge 485 (Attachment V);
6. Collective Bargaining Agreements dated January 8, 1979, between Shell Oil Company and IAMAW (Attachment VI);
7. Collective Bargaining Agreements dated January 8, 1979, between Shell Oil Company and IUOE Local 525 (Attachment VII);
8. Collective Bargaining Agreements dated January 8, 1979, between Shell Oil Company and PPF Local 555 (Attachment VIII);
9. Collective Bargaining Agreements dated January 8, 1979, between Shell Oil Company and Seven Unions

(Locals 525, 649, 56, 917, 268, Carpenters Dist. Council and LIUNA) (Attachment IX)

10. Map outlining Labor Market Data (Attachment X)

11. List of counties with Labor Market Data (Attachment XI);

12. Summary Hiring Data 1979 (Attachment XII);

13. Summary Hiring Data 1978-1979 (Attachment XIII);

14. Summary Production Data 1979 (Attachment XIV);

15. Summary Production Data 1977-1979 (Attachment XV);

16. Summary Termination Data 1979 and 1977-1979 (Attachment XVI);

17. Summary Promotion/Hiring Data combined 1979, combined 1977-1979, total Workforce Data December 31, 1979 (Attachment XVII);

18. Copy—EEOC Form 131 and Charge of Discrimination by Commissioner Norton, 072800036 (Attachment XVIII).

Insofar as any of this documentation is or will be helpful towards resolution of the issues alleged in this charge, its submission is appreciated. However, as will be detailed below, this submission falls far short of the quantum of information necessary to accurately determine the validity of the allegations made in this charge.

Attached is an additional copy of the first Data Request made of your organization on October 26, 1979, more than five (5) months ago. As has been repeatedly pointed out, the District Office is not in a position to argue over the propriety of the issuance of the charge. It is and will continue to be the responsibility of this office to investigate the charge as it currently exists. In that respect, we are still in need of all the items contained in the first Data Request, as modified below:

Items #1 through #6—no modifications;

Item #5—partially satisfied by your March 7, 1980 submission, names are still necessary;

Item #6—submission of the Collective Bargaining Agreements described above partially satisfies this item request, additional and earlier contracts are, however, still required to be produced;

Items #7 through #12—no modifications were agreed upon;

Item #13—modified to delete reporting as to ethnic status, modified to change the word minority to Black, modified reporting period to October 1, 1977 through September 30, 1979;

Items #14 through #19—no modifications were agreed upon;

Item #19—interpreted to exclude professional organizations, trade organizations and the like, but to include private/social slubs for which Shell Oil Company purchases membership;

Item #20—modified as to time period (new dates are April 1, 1977 through March 31, 1979;

Items #21 and #22—time period modified to October 1, 1977 through September 30, 1979, with reservation of EEOC right to expand period, if necessary;

Items #21 and #23—to the extent that Respondent raised concerns about the burden of compiling this information and the Commission's District Office personnel were and remain willing to accept information in whatever form maintained which substantially responds to these requests;

Item #22—no other modifications, except as described above;

Item #24—no modifications agreed upon, however, the submission of information in the format in which it is maintained for review by OFCCP will be accepted in lieu of the format requested, provided the information is substantially the same;

Item #25—modified to delete reporting on SSA's and other minorities, except Blacks; other modifications proposed but not agreed to pending receipt of summary data as to names

of participants by EEO category and names of courses offered;

Items #26 and #27—modified to the extent that Commission's personnel agreed to accept summary data by EEO-1 job category, showing percentage of terminations of Blacks, Whites, males and females within each category;

Item #28—no modification

Items #29 through #33—no modifications proposed or agreed upon.

Your submission of Attachments I, II, XII, XIII, XIV, XV, XVI and XVII are insufficient insofar as they contain only facility totals of the activity reported on, rather than information that can be used to analyze activities by particular and meaningful categories. Your submission of Attachments II, X, XI, XII and XIII are insufficient to make any legitimate determination of the Labor Market availability.

Our records show that you were served with this charge and the first request for information on October 26, 1979. At that time, you were advised that we wished to meet and establish a production date. Your request that the meeting be postponed from November 8, 1979 to November 28, 1979 was honored by the Commission. At our November 28, 1979 meeting, while the Commission wished to schedule a much earlier meeting to finalize the most expeditious means of getting production, we acquiesced in your request for a January 15, 1980 date. You were unable to meet on January 15, 1980, and the Commission, upon receipt of your notice that you could not give us a definite date to meet to further discuss compliance with the Commission's request, issued you a notice that we could proceed under Section 710 of Title VII to Subpoena information, unless substantive responses to major items were produced on or before February 25, 1980. On February 21, 1980, you submitted only the information outlined above, not the information requested and discussed at our November 28, 1979 meeting.

To date, then, while the Commission has made numerous concessions and modifications in order to accomodate your concerns, we have received little or no substantive informa-

tion to move this investigation forward. We are now giving final notice that full compliance with our first Data Request is expected to be produced on or before April 25, 1980. Without such compliance in full by this date, this District Office will be forced to issue a Subpoena duces tecum for the information requested. No further extensions will be granted.

As has been the case from the outset of this proceeding, the Commission remains willing to accept access to the requested information, provided, of course, that a mutually agreeable date for review and reproduction at your facility is agreed upon prior to the date specified herein for production. As has also been the case since the outset, the Commission remains willing to discuss the substitution of preexisting reports for some of the information requested, provided such a discussion can be accomplished prior to the production.

Subsequent Data Requests are normally made after analysis of data from your response to the first Data Request; however, when any of the relevant evidence identified by the first Data Request is available but not provided, the Commission will issue a Subpoena seeking all the evidence reasonably related to the investigation, as identified by Attachment B. Compliance with the first Data Request (Attachment A) and any subsequent Data Requests, will likely facilitate the investigation by allowing for subsequent submission of specific evidence after our analysis of the preliminary evidence. If items identified in the first Data Request, as modified, are provided by April 25, 1980, the evidence in the second Attachment (Attachment B) but not in the first Data Request, need not be provided unless specifically requested by the Commission in a later Data Request.

Your future cooperation is appreciated.

Sincerely,

/s/

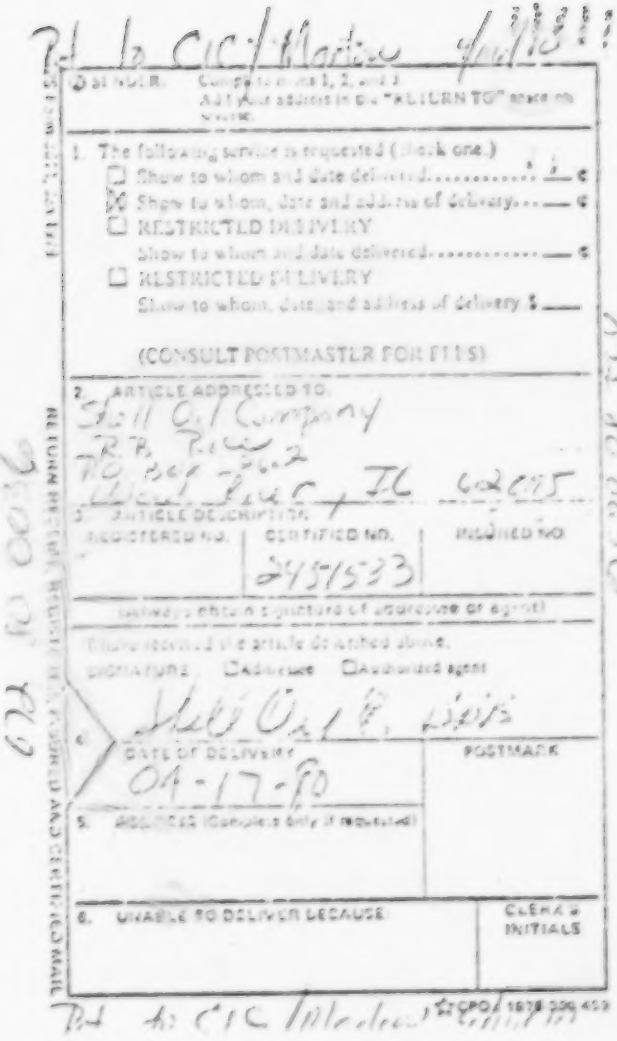
EARNESTINE C. THOMAS

*Supervisory Equal Opportunity Specialist*

Enclosures: (2)

Attachment A

Attachment B



Pd to CIC/Marion 4/18/90

RETURN RECEIPT REQUESTED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered..... ¢
- ☒ Show to whom, date and address of delivery.... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered..... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom, date and address of delivery $

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Shell Oil Company
R.P. Price
P.O. Box 4602
Houston, TX 77210

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. 245153 | INSURED NO.

(always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. Shell Oil Co. Davis
DATE OF DELIVERY 04-17-90
POSTMARK

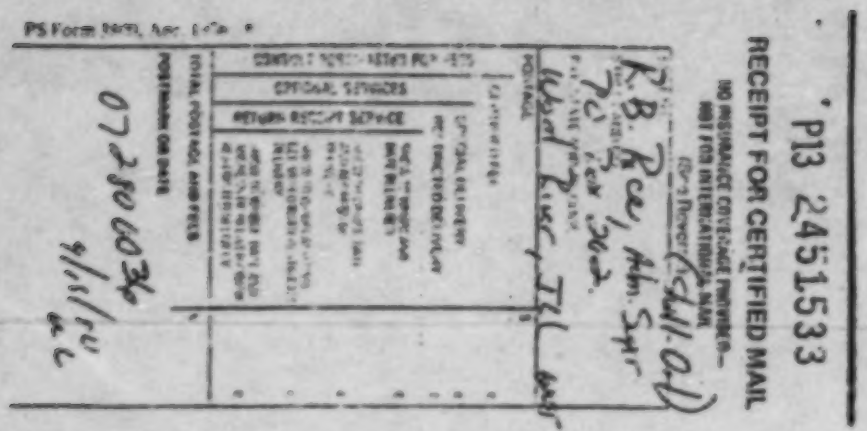
5. ADDRESS (Complete only if requested)

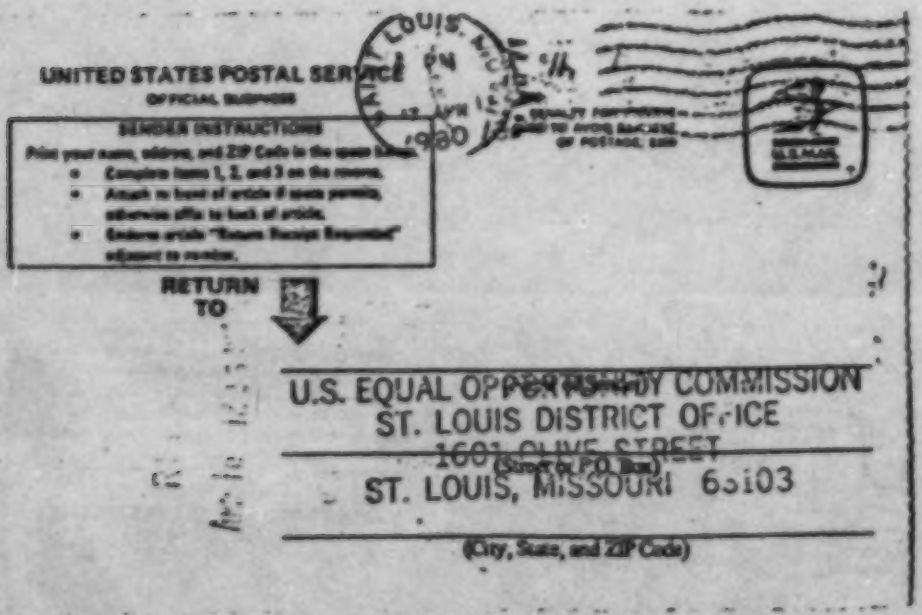
6. UNABLE TO DELIVER BECAUSE:
CLERK'S INITIALS

Pd to CIC/Marion

PS Form 3811, Dec. 1978 [illegible]

Pd to CIC 4/18/90


P13 2451533
RECEIPT FOR CERTIFIED MAIL
OFFICIAL SERVICE
RETURN RECEIPT SERVICE
K.B. Rice, Adm. Supr.
Postage
07280 0036
9/11/80


UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS
SENDER INSTRUCTIONS
RETURN TO
U.S. EQUAL OPPORTUNITY COMMISSION
ST. LOUIS DISTRICT OFFICE
1601 OLIVE STREET
(Street or P.O. Box)
ST. LOUIS, MISSOURI 63103
(City, State, and ZIP Code)

SHELL OIL COMPANY
P.O. Box 262
Wood River, Illinois 62095

April 28, 1980

Subject: Charge No. 072800036
Shell Oil Company
Wood River Refinery

*CERTIFIED MAIL*
*RETURN RECEIPT REQUESTED*

Ms. Earnestine C. Thomas
Supervisory Equal Opportunity Specialist
Equal Employment Opportunity Commission
1601 Olive Street
St. Louis, Missouri 63103

Dear Ms. Thomas:

This is in response to your April 11, 1980, letter which was received at the Shell Wood River Refinery via certified mail on April 17, 1980.

Your letter requires clarification in several respects. Although the chronology of meetings and correspondence on page 4 is generally accurate, the narrative fails to record the understandings that were reached. The ongoing discussions of due dates left neither of the parties in doubt about the reasons for delays, and the EEOC representatives indicated that they were in complete understanding and agreement with the necessities of such delays.

We appreciate your attempts to make"concessions and modifications in order to accommodate". The fact remains, however, that those modifications were made by the Commission to correct its questionnaire in an attempt to put it in accord with the scope of the general charges and to correct a number of inconsistencies therein as to the time periods covered by various items. Your letter also fails to acknowledge the substantial burden of collection and compilation required to meet the Commission's demands for information. Moreover, we question the appropriateness of your utilizing a standardized form questionnaire without

approval of the Office of Management and Budget (OMB) as required by the Federal Reports Act.

Additionally, the Employment Analysis Report Profile (EARP) which was forwarded to us with the Commission's March 21, 1980, letter appears to contain employment figures for year-end 1975; therefore, we continue to question whether the EEOC relied on data outside the applicable statutory time limits in issuing this Commissioner's charge.

Shell's questions have not been adequately addressed even though Shell has submitted data indicating that this Commissioner's charge is unfounded and should be dismissed. In light of the above and previously stated concerns, and your statement that "... the District Office is not in a position to argue over the propriety of the issuance of the charge", this matter and our concerns should be passed on to the appropriate parties in the Commission who are in a position to discuss and deal with the propriety of the issuance of the subject charge.

We remain prepared to discuss this matter further if necessary.

Very truly yours,

/s/ _____

R. B. RICE

*Administrative Superintendent*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

# SUBPOENA

NO. [illegible]

TO: Regan Rice, Administrative Superintendent
(Name)
P.O. Box 310, Wood River, Illinois 62095
(Address)

IN THE MATTER OF Eleanor Holmes Norton

v. Shell Oil Company

Charge No. 07281[illegible]

Having failed to comply with previous request(s) made by or on behalf of the undersigned Commission official, YOU ARE HEREBY REQUIRED AND DIRECTED TO:

☐ *Testify before:*

☐ *Produce and bring the documents described below:*

☐ *Provide access to the evidence described below for the purpose of examination or copying to:*

[illegible] of the Equal Employment Opportunity Commission

at [illegible] on [illegible] at [illegible] o'clock of that day.

The evidence required is: [illegible]

"D, consisting of three sheets, beginning with the heading [illegible] ment A.

If the addressee intends not to comply with this subpoena, see the applicable portion of Section 1601.16 of the Commission's Procedural Regulations (reprinted on reverse) for guidance.

| ISSUING OFFICIAL (Typed name, title and address) | ON BEHALF OF THE COMMISSION (Signature) |
|---|---|
| [illegible] District Director 210 N. Tucker Blvd. St. Louis, MO 631[illegible] | DATE: [illegible] |

EEOC FORM AUG 76 136 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE AND SHOULD NOT BE USED

CHARGE FILE COPY

Exhibit H

EXHIBIT H—SUBPOENA

ATTACHMENT A

Attachment to Subpoena No. 80-35 in Charge No. 072800036 dated September 27, 1979

Each numbered item shall apply to all departments, employees, and positions within or controlled by Shell Oil Company's facilities located at Wood River, Illinois and all predecessor facilities, departments, employees, and positions performing similar functions at any time since 1965, unless otherwise indicated.

Each item is to be answered separately for each year from January 1, 1976, to the present, unless otherwise indicated. For each numbered item requesting "Lists or Documents", lists, compilations or summaries, must be provided to the extent that such compilations or summaries are maintained or can be produced through computer or other mechanical sources available to the Respondent to produce such materials. Documents must otherwise be provided. Please identify each document or response by using the number of the item to which it responds, and present documents or responses in numerical order.

Unless a contrary meaning appears, the following definitions apply:

a. "*Employee*" refers to any person, including all officers, executives, managers, supervisors, and professionals who are or have been employed by the Company on a full or part time basis and on a temporary or permanent basis;

b. "*Job Title*" and "*job*" refer to the descriptive names given by the Company to the positions held by its employees;

c. "*Job Group*' refers to the Company's classification of employees for purposes of utilization workforce analysis in its Affirmative Action Program;

d. "*Candidate*" refers to applicants and any person seeking or considered for permanent, full-time, or temporary employment at the Company and includes, but is not limited to, walk-in applicants,

write-in applicants, and all persons whose names are referred to or obtained by the Company from employment agencies or any other internal and external recruiting sources, whether such persons are inteviewed or not; "internal candidates" refer to any person who is on the Company payroll at any facility at the time she/he meets the definition of "candidate", and "external candidates" refer to all other persons who meet the definition of "candidate";

e. "*Hire*" refers to any hire or rehire for permanent, temporary, full-time or part-time employment; it does not include a recall, reinstatement or transfer from another facility:

f. "Promotion" refers to any permanent change from one job to another with a higher maximum rate of pay;

g. "*Documents*" refer to any and all writings, records, reports, memoranda, books, letters, coorespondence, notes, manuals, summaries, compilations, studies, papers, circulars, directives, applications, lists, surveys, agreements, contracts, postings, printouts, requisitions, plans, programs, cards, notices, position descriptions, files, ledgers, indexes, ratings, evaluations, tests, references, affirmative action plans, equal employment programs, and every other writing;

h. *Test*" refers to any paper and pencil or performance measure used as two (2) basis for any employment decision including, but not limited to, any measure of general intelligence, knowledge, specific intellectual abilities, physical abilities, technical skills, mechanical, clerical, or other aptitudes, dexterity and coordination, knowledge and proficiency, occupational and other interest, attitudes and personality;

i. "*Department*" refers to any functional unit, division, branch, or section into which employees are grouped or organized by the Company;

j. "*Facility*" refers to the Company's business operations at one address;

k. "*EEO–1 Category*" refers to those job categories used on the EEO-1 Employer Information Report;

l. "*Race Identification*" refers to the following grouping as used as the EEO–1 Employer Information Report:
White (not of Hispanic Origin)
Black (not of Hispanic Origin)
Others

m. "*Discipline*" refers to and includes discharge, suspension, demotion, forced transfer, forced resignation, oral warnings, written warnings, and written reprimands.

The evidence required is all documents maintained by the Respondent, Shell Oil Company, or within its possession or control which constitute or relate to the following:

1. Lists or Documents showing for each official at the facility who has had over-all responsibility for recruitment, hiring, initial assignment, training, salaries, promotion, and/or termination at any time since 1976, the following information:

a. Name, sex, and race identification;

b. Title;

c. Business address;

d. Telephone number;

e. Description of area(s) or responsibility and scope of responsibility;

f. Time period during which such responsibility was exercised;

g. If no longer employed by the Company, the address and telephone number where the individual can be reached.

2. An organizational chart and/or Lists and/or Documents showing:

a. All sections, departments, divisions, or other organizational sub-groups in the facility, identifying the lines of authority;

b. The name, job title, sex and race identification of the individual in charge of each group or subgroup on the chart, or List or Documents;

c. Description of the function of each group or subgroup.

3. Lists or Documents showing the following information with respect to each labor organization, if any, which has represented employees at the facility at any time since 1976:

a. Name and address of the local union;

b. Name, business address, and telephone number of each business agent or similar representative;

c. Names of all regional, national, or international organizations with which the local union is affiliated;

d. All job titles in the bargaining unit represented by the union;

e. Copies of all collective bargaining agreements, together with any letters of understanding or other clarifying documents, in effect at any time since 1976, excluding those submitted under cover of Mr. R. B. Rice's March 7, 1980 letter;

f. Description of union participation in recruitment, promotion, upgrading, transfer, training, or layoff procedures, if not specified in the collective bargaining agreement.

4. Lists or Documents which show for each year as of April 1, 1977, April 1, 1978, and April 1, 1979, for each division and/or other sub-group identified in the materials responsive to Item 2, all job titles, including the following information for each job title:

a. EEO–1 category;

b. Job code;

c. Whether exempt or non-exempt;

d. Method of compensation (e.g., hourly, weekly, commission, etc.);

e. Wage rate or labor grade for hourly employees; salary grade or level and range if salaried job (if there is no established range for the job, provide the actual salary range of persons in the job);

f. Total number of *permanent* full-time employees, and a breakdown of that total by sex, and race identification;

g. Number of vacancies in the job since March 31, of the previous year;

h. Percentage of the vacancies specified in Item g that were filled by promotion.

(if lists are being provided, show for each unit the Official and Manager positions in order of authority. For the other EEO-1 categories, order the job titles by wage rate, or salary level.—See suggested format 1)

5. Lists or Documents showing the following information for all part-time and temporary personnel:

a. The total number of permanent part-time employees employed as of April 1, 1977, April 1, 1978, April 1, 1979, and separately for each of those dates the number employed by organizational subgroup, EEO-1 category and job title;

b. The total number of *temporary* employees employed as of April 1, 1977, April 1, 1978, April 1, 1979, and separately for each of these dates, the number employed by organizational sub-group, EEO–1 category and job title.

6. For each job title identified in response to Item 4, provide copies of all job descriptions, job standards, job analyses or other documents which indicate the duties, responsibilities, qualifications and components of the job.

7. Affirmative Action Plans, all supporting data for each year, 1976 to 1979, and all documents showing all affirmative action compliance program requirements, including all correspondence and agreements with or from any compliance agency.

8. Copies of the Wood River facility's EEO–1 Employer Information Report for each year since 1978, and Lists or Documents showing:

a. The job titles included in each EEO–1 category;

b. If some job titles have been reported in different EEO-1 job categories for different years, show those changes by category and year.

9. A copy of company documents, used at any time since 1977, as follows:

a. All forms used in the application, hiring, and assignment process, including but not limited to applications, applicant evaluation forms, testing forms, interview forms, job history forms, reference forms;

b. All other personnel related forms, including but not limited to those used in the transfer, promotion, selection for training, pay change, layoff, evaluation, discipline, or termination of employees;

c. All manuals of personnel procedures (such as employee handbooks, supervisor's manuals, manuals of personnel policies and procedures, and complaint or grievance policies);

d. All other documents which, at least in part, descrioe Company personnel policies and procedures;

e. Health, pension and retirement plans, leave requlations, and other fringe benefit plans, including those relating to maternity benefits;

f. Salary administration plans, including descriptions of salary groups, labor grades and salary ranges, all job analyses, job descriptions, job standards, and any other documents used to set salary or wage levels and rates for each job (unless provided in response to Item 6).

10. For each report regulary or specially prepared by or for the Company at anytime since 1977 concerning the facility's personnel related activities (including, e.g., reports relating to applicants, hiring, assignments, promotions, transfers, terminations, employee personnel histories, employee turnover, EEO activities, or projected future hiring or promotions) provide a copy of the report and Lists or Documents showing:

a. Name, description, and purpose of the report;

b. Whether the report is prepared manually or by using data processing capabilities;

c. The documents systems or other information sources used to prepare the report, and for each

such system or source, whether it contains information as to sex and/or race/identification;

d. The name and title of the person responsible for preparing the report.

11. *Copies of:*

a. All records, documents, and reports that have been maintained anytime since 1977 that include in list, summary, or compiled form information as to the sex and/or race/identification of applicants, candidates, or hires including but not limited to such records, interview records, initial assignment records, summary listings of applicants and/or hires, and any other records, documents, and reports;

b. All documents, records, and reports maintained at any time since 1977 which reflect in list, summary, or compilation form, information on:

1) Persons who sought promotion or transfer;

2) Persons selected for promotion or transfer;

3) Reasons for selection or non-selection of persons for promotion or transfer;

4) Persons identified by the company as "promotable";

5) Sex and/or race/identification of persons who sought and/or were selected for promotion or transfer.

12. A copy of any written criteria or standards used at any time since 1977 in connection with evaluating candidates for hire, assignment, transfer, promotion, or training which have not been supplied in response to Items 6 or 9.

13. Separately for each of the criteria listed below, provide Lists or Documents showing the facility's use of the criterion from 1977 to the present, including, but not limited to: (1) how the facilsity solicited the information and if obtained; (2) how the information, if obtained, has been used in making employment decisions; (3) the weight given the criterion; and (4) the jobs for which the criterion has been used:

a. Arrest records;

b. Conviction records;

c. Credit or financial checks;

d. Recommendations from previous employers;

e. Personal references;

f. Military record or veterans preference;

g. Previous salary or income;

h. Marital status;

i. Number and ages of children;

j. Friends and relatives in the company;

k. Height or weight;

l. Supervisory recommendations.

14. Provide a copy of each paper and pencil or formal performance measure (hereinafter "test") used at any time since 1976 in connection with any hiring, assignment, promotion, transfer, or training decision; for each such test, provide Lists or Documents with the following information:

a. Name, desacription of the test, and scoring procedures;

b. Name and title of the person(s) responsible for administering the test;

c. Time period during which the test has been used;

d. Purpose of the test, including the job titles for which the test has been used;

e. The specific manner in which test results are applied in making employment decisions for each job title, including any minimum score or rating.

15. Separately for each occasion each test identified in response to Item 14 above was given, provide Lists or Documents showing for all persons taking each test anytime since October 1, 1977, the following information:

a. Name;

b. Sex;

c. Race/identification;

d. Date on which the test was taken;

e. Score, rating, or other test result;

f. Final disposition or employment action taken as a result of the test.

16. Lists or Documents, including the following information for each test identified in response to Item 14 above:

a. A copy of each validation study including all relevant documents and attachments;

b. Name and address of person or organization conducting the study;

c. Date of each study;

d. Results of each study.

17. Lists or Documents showing the following information concerning recruitment sources listed below, applicable anytime during the period April 1, 1977, to date:

a. For newspaper or other media advertising utilized for seeking applicants for vacant positions, include the name and address of each newspaper or other media, the date(s) on which each was so used, and the job(s) to be filled on each date;

b. For high schools, technical schools, colleges and/or universities contacted for the purpose of encouraging applications or interviewing applicants, include the name of each institution, the dates of each such contact, the nature and extent of the contact, and the job(s) involved on each occasion;

c. For public or private employment agencies contacted for the purpose of recruiting applicants, include the name and address of each such employment agency, the dates of each such contact, the nature and extent of the contact, and the job(s) involved on each occasion;

d. For specialized organizations contacted, such as women's or minority groups, for the purpose of recruiting applicants, include the identity of the group, dates of the contact(s), and the job(s) involved on each occasion;

e. For incumbent employees utilized as a recruitment source for applicants, identify any bonus or incentive used to encourage employee referrals, and show for which jobs this source was used;

f. For other recruitment sources utilized in seeking applicants, identify the name and address of each source, the dates of each contact, the nature and extent of the contact, and the job(s) involved on each occasion.

18. For each recruitment source utilized as identified in the Lists or Documents provided in response to Item 17 above, provide Lists or Documents which show for each EEO–1 job category, the approximate percent of new hires during the period October 1, 1977, to the present, which have come for each source. (If Lists are being provided, see suggested format 2)

19. Lists or Documents setting forth the following information for each vacancy by EEO–1 categories (e.g., in EEO–1 categories official and manager, professional, technical, salesworker) filled anytime during the period October 1, 1977, to date:

a. Date position(s) became vacant, job title, job group, department, EEO-1 category, salary grade, and salary range;

b. Minimum qualifications required, including but not limited to education, experience, and test(s) results;

c. All recruitment, both internal and external, performed for each, specifying for each recruitment source and method the total number of candidates obtained by sex and race/identification;

d. Whether internal candidates considered;

e. Name, sex, race/identification, salary or wage, and date of selection for each person selected.

20. Lists or Documents setting forth the following information for each internal candidate considered, including those selected for each vacancy filled as identified by number nineteen above:

a. Name, sex, race/identification, positions considered for, and date(s) of consideration;

b. Individual qualifications as of date of consideration, including but not limited to, applications, test(s) results, interview ratings, and all documents showing changes in qualifications subsequent to being hired,

including but not limited to nature of change and date of change:

c. Complete individual evaluation history indicating date of evaluation, rating and name, job title, sex, race/identification of person giving evaluation;

d. Complete individual salary history showing each change in salary, date, and reason for change;

e. Complete individual job title history showing each change in job title, date and reason for change, indicating whether promotion, demotion, transfer, or other action;

f. Complete individual training history showing type of training, date, and reason for training;

g. If selected, provide date, position(s), and name, job title, sex, race/identification of persons making selection decision, indicating whether promotion, transfer, reassignment, or other action;

h. If not selected, provide date, reason(s) for nonselection, and name, job title, sex, race/identification of person(s) making selection decision for each position where considered but not selected. (If Lists are being provided, see suggested formats 3a and 3b.)

21. Lists or Documents setting forth the following information for each external candidate seeking consideration for, including those selected for, each vacancy filled as identified by number nineteen above:

a. Name, sex, race/identification, date of application, position(s) considered for, and date(s) of considertion;

b. Individual qualifications considered, including but not limited to, applications, test(s) results, interview ratings, and all other records indicating qualifications;

c. If hired, provide the date, position, salary or wage, and name, job title, sex, race/identification of person(s) making selection decision;

d. If not hired, provide the date and reason for nonselection, and name, job title, sex, race/identification of person(s) making selection decision. (If Lists are being provided, see suggested formats 3a, 3b, 3c.)

22. Lists or Documents setting forth the following for all employees by EEO-1 categories (e.g., in EEO-1 categories official and manager, professional, technical, and craft workers, or at all locations) on the payroll anytime during the period October 1, 1977, to date, including the following information for each:

a. Name, sex, race/identification and date of hire;

b. Position, job title, salary, and salary grade as of date of hire;

c. Individual qualifications as of date of hire, including but not limited to, applications, tests, interview ratings, resumes, references, and all other records showing qualifications;

d. All changes in individual qualifications subsequent to being hired,, including but not limited to, nature of change and date of change;

e. Complete individual evaluation history indicating date, evaluation rating, and name, job title, sex, and race/identification of person giving evaluation;

f. Complete individual salary history, including salary change, the amount, date, and reason for change, specifying each change in salary grade;

g. Complete individual job title history showing each change in job title, date and reason for change, indicating whether promotion, demotion, transfer, or other action;

h. Complete individual disciplinary history, including date, reasons for, and method of discipline, nd name, sex, race/identification, job title(s) of person(s) administering and responsible for each disciplinary action;

i. If no longer employed, date and reason for separation.

(If Lists are being provided, see suggested formats 4a and 4b.)

23. Lists or Documents setting forth the following information for each employee who separated, including involuntary and voluntary separations fromt he facility anytime during the period February 1, 1978, to date:

a. Name, sex, race/identification and date of hire;

b. Date and reason for separation;

c. Job title, EEO-1 category, salary or wage and department as of date of separation;

d. A copy of any summary report showing separations identified above.

(If Lists are being provided, see suggested formats 4a, 4b.)

24. Lists or Documents showing for all training programs, tuition refund programs and any other special program in effect anytime during the past three (3) years the following:

a. Name and type of program;

b. Procedures for informing employees about program;

c. Application procedures, eligibility requirements, and qualifications for selection;

d. Job(s) for which participants are trained;

e. Total number of employees of each sex, race/identification who participated in each program.

(If Lists are being provided, see suggested format 5.)

25. For any computer file maintained by the Company or any other entity at anytime from 1976, to date, containing Company personnel information, such as personnel, payroll seniority, work history, etc., provide Lists or Documents with the following information separately for each such file:

a. The name of the file;

b. Name, model number, configuration and location of the computer on which the file is kept;

c. Medium on which the file is kept (e.g., tape, disk, cards, etc.);

d. Date on which the company started using the file, and if the file is no longer used, the date the use of the file was discontinued;

e. File documentation, including file layouts and formats; and showing the number of records maintained in the file; and with the following information for each type of record:

1) Name of records;

2) When and how such a record is generated;

3) Minimum and maximum number of each type of record contained in file;

4) Name and description of each field on the record;

5) Description of all codes associated with each field on the record (e.g., termination codes, job codes, etc.).

f. Categories of employees on which the file contains information;

g. For each file which contains information on inactive and/or terminated employees include with the Lists or Documents the following:

1) The length of time information regarding such employees is retained on the file;

2) Time and method by which the file is purged of information regarding such employees;

3) How, where, and on what medium such purged data is stored and for how long.

h. The name and description of each report which is regularly generated from the file, and include with the Lists or Documents the following on each report:

1) Name, title, and business address of person(s) having custody of report;

2) Purpose and use of report;

3) Sample of one or two pages of report.

26. Separately for each computer file identified in Item 27, provide Lists or Documents which show:

a. The intervals at which copies are generated or the file preserved (e.g., yearly, quarterly, monthly, etc.);

b. The date on which copies began to be kept or files preserved;

c. The date of each copy of preserved file.

27. Lists or Documents showing the name and describing each generalized information retrieval program and/or report generator (e.g., Mark IV Score, etc.) maintained or utilized by the Company, including but not limited to, commercially available programs/packages, and identity of the company which developed each such program.

28. Lists or Documents showing for any of the data identified in Items *4, 5, 10, 11, 15, 18-24,* or any other Items, its availability in full or in part in machine readable form, including the specific information available under each Item and the time period available.

29. Lists or Documents which show or identify the person(s) by name, job title, and business address; responsible for maintaining each document, list, compilation, summary, and record provided in response to this Subbpoena.

Issuing Official

W. Ed Mansfield
District Director
1601 Olive Street
St. Louis, MO 63103

ON BEHALF OF THE COMMISSION:

---

DATE: 5-15-80

COMPANY XYZ .

SUMMARY OF CURRENT EMPLOYEES AS OF _____ 1978

| JOB TITLE | JOB CODE | SALARY RANGE | SALARY LEVEL | FREQ | ALL EMPLOY TOT | ALL EMPLOY MALE | ALL EMPLOY FEM | BLACK TOT | BLACK MALE | BLACK FEM | HISPANIC TOT | HISPANIC MALE | HISPANIC FEM | OTHER TOT | OTHER MALE | OTHER FEM |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| DIVISION XXXXXXXXXXXXX | | | | | | | | | | | | | | | | |
| DEPARTMENT FINANCE | | | | | | | | | | | | | | | | |
| OFFICIALS AND MANAGERS | | | | | | | | | | | | | | | | |
| VICE PRESIDENT - FINANCE | | | 20 | | | | | | | | | | | | | |
| ACCOUNTING MANAGER | | | 18 | | | | | | | | | | | | | |
| FORECASTING MANAGER | | | 18 | | | | | | | | | | | | | |
| COST CONTROL MANAGER | | | 17 | | | | | | | | | | | | | |
| ACCOUNTING SUPERVISOR | | | 15 | | | | | | | | | | | | | |
| XXXXXXXXXXXXXXXX | | | 15 | | | | | | | | | | | | | |
| XXXXXXXXXXXXXXXX | | | 15 | | | | | | | | | | | | | |
| TOTAL OFFICIALS AND MANAGERS | | | | | | | | | | | | | | | | |
| PROFESSIONALS | | | | | | | | | | | | | | | | |
| ACCOUNTANT, SR. | | | 14 | | | | | | | | | | | | | |
| BUDGET ANALYST, SR. | | | 14 | | | | | | | | | | | | | |
| ACCOUNTANT , JR. | | | 12 | | | | | | | | | | | | | |
| BUDGET ANALYST, JR. | | | 12 | | | | | | | | | | | | | |
| XXXXXXXXXXXXXXXX | | | 12 | | | | | | | | | | | | | |
| XXXXXXXXXXXXXXXX | | | 11 | | | | | | | | | | | | | |
| TOTAL PROFESSIONALS | | | | | | | | | | | | | | | | |
| OFFICE AND CLERICAL | | | | | | | | | | | | | | | | |
| ACCOUNTING CLERK | | | 7 | | | | | | | | | | | | | |
| BUDGET CLERK | | | 5 | | | | | | | | | | | | | |
| SECRETARY | | | 5 | | | | | | | | | | | | | |
| XXXXXXXXXXX | | | 4 | | | | | | | | | | | | | |
| XXXXXXXXXXX | | | 3 | | | | | | | | | | | | | |
| TOTAL CLERICAL | | | | | | | | | | | | | | | | |
| TOTAL - FINANCE DEPARTMENT | | | | | | | | | | | | | | | | |

SUGGESTED FORMAT FOR ITEM 4 -
Summary of the Workforce

Suggested Format 2 (May be used in response to item 18)

In the chart below listing traditional sources for recruiting applicants, indicate for each job category, the approximate percentage of new hires during the period _____ to the present which have come from each source. Each vertical column should total 100%.

| Source | Off/Mgr. | Professional | Technicians | Sales | Clerical | Craft | Operatives Laborer, Servic |
|---|---|---|---|---|---|---|---|
| 1. Self-Referral, Walk-In, or Write In | | | | | | | |
| 2. Public Employment Agency | | | | | | | |
| 3. Private Employment Agency | | | | | | | |
| 4. Employee Referral | | | | | | | |
| 5. College or University | | | | | | | |
| 6. Technical, Vocational School | | | | | | | |
| 7. Media or Advertising | | | | | | | |
| 8. Minority-Female Organizations | | | | | | | |
| 9. Professional Organizations | | | | | | | |
| 10. Corporate Recruiting Firms | | | | | | | |
| 11. Industry Sources | | | | | | | |
| 12. Referral Unions | | | | | | | |
| 13. Other | | | | | | | |

. LISTING OF PERSONS HIRED - Provide the following information on all persons hired during the period_____ grouped by EEO-1 Category and job title and within job title by date of hire.

| Job Hired Into | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| EEO-1 Category | Job Title and Job Code | Date of Hire | Department | Salary Level & Amt or Wage Rate | Status* | Name of Person Hired | Race Ethnic ID | Sex | Job Applied For | Date of Appl. | Recruitment Source |
| | | | | | | | | | | | |

* Status - Full-time, Part-time, Temporary, Rehire

. LISTING OF APPLICANTS NOT HIRED Not Provide the following information on all applicants not hired, not provided uding college recruits, grouped by EEO-1 Category and job applied for and then by date of application

| EEO-1 Category | Job Applied For | Date of Application | Name of Applicant | Race Ethnic ID | Sex | Recruitment Source | Disposition |
|---|---|---|---|---|---|---|---|
| | | | | | | | If not hired, provide reason for rejection.<br>If application held p further consideration, s time period held. |

Recruitment Sources - Self-Referral, public employment agency, private employment agency, employee referral, college or university, vocational or trade school, media ads, minority or female organizations, professional organizations, referral unions, industry sources, recruiting firms, or other (please state).

(THIS PAGE INTENTIONALLY LEFT BLANK)

Suggested Format 3c (May be used as response to [illegible]

LISTING OF PROMOTIONS - Provide the following information on all persons promoted during the period grouped by EEO-1 Category and job title promoted to and within job title by date of promotion. Do not include routine salary increase or upgrades on this chart.

| Date of Promotion | Job Promoted To | | | | Name of Employee | Race Ethnic ID | Sex | Previous Job | Dat Hir |
|---|---|---|---|---|---|---|---|---|---|
| | EEO-1 Category | Job Title and Job Code | Department | Salary (Level and Amt) or Wage Rate | | | | EEO-1 Category, Job Title Dept., Salary(Level and Amt) or Wage Rate, Years in this Title, Location if different | |

Suggested Format 4a (May be used in response to items 23 & 24)

LISTING OF SEPARATIONS - Provide the following information on all employees who separated from the facility for the period _____, grouped by EEO-1 Category and job title and then by date of separation. This listing should include both voluntary and involuntary separations.

| JOB SEPARATED FROM | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| EEO-1 Category | Job Title and Job Code | Date of Separation | Salary or Wage | Department | Name of Employee | Race Ethnic ID | Sex | Date of Hire | Reason for Separat |
| | | | | | | | | | |

Suggested format 4b (May be used in response to item 23)

Summary of Separations. - For the period _____, provide information on all separations grouped by EEO-1 Category and Job Title.

| EEO-1 Category | Job Title | All Separations | | | Black | | | Hispanic | | | Other Minority | | | White | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | Male | Female | Total | Male | Female | Total | Male | Female | Total | Male | Female | Total | Male | Female |

Suggested format 5 (May be used in response to item 24)

Special Programs - Attach description of each program, including size, cycling, procedure for informing employees of program, application procedures, eligibility, curriculum length,

| Training Programs by name of program. List all groups during past 3 years | Total | | | Black | | SSA | | Other Min. | | White | | Dates of Program | Describe qualifications for selection, & job(s) for which participants are trained. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | All | Male | Female | Male | Female | Male | Female | Male | Female | Male | Female | | |
| | | | | | | | | | | | | | |
| Tuition Refund Report usage in past 3 years | | | | | | | | | | | | | |
| Other | | | | | | | | | | | | | |

# EXHIBIT I—PROOF OF SERVICE

## PROOF OF SERVICE

I hereby certify that being over 18 years of age and not a party to or any way interested in these proceedings, I duly served a copy of the subpoena on the persons named in this subpoena.

- ☐ in person
- ☒ by registered mail
- ☐ by leaving a copy with a responsible person, at the principal office or place of business, to wit:

Name Vivian L. Lawson

Position Clerk-Typist

Address [illegible]

On 5/15/80
(Mo, day & year)

Vivian L. Lawson
(Signature of person making service)

Clerk-Typist
(Official title, if any)

State [illegible]

Parish/
County [illegible]

## CERTIFICATION OF ATTENDANCE

I certify that the person named herein was in attendance and satisfactorily produced the records requested or gave oral testimony at

_____

On _____
(Mo, day & year)

_____
(Signature of certifying E.E.O.C. official)

_____
(Official title)

NAME AND ADDRESS OF SENDER: EEOC
1601 Olive
St Louis, Mo 63103

Indicate type of mail
☐ REGISTERED ☐ COD
☐ INSURED ☐ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

| NUMBER OF ARTICLE | NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS | POSTAGE | FEE | Handling Charge | Actual Value (If Registered) | DUE SENDER IF C.O.D. | R. R. FEE | S. D. FEE | S. H. FEE | REST. DEL. FEE / REMARKS |
|---|---|---|---|---|---|---|---|---|---|---|
| 226791 | Shell Oil Company<br>Roger Rice, Administrative Superintendent<br>PO Box 1262<br>West Pine, IL 62095 | | | | | | | | | |
| 0 | | | | | | | | | | |
| 1 | | | | | | | | | | |
| 2 | | | | | | | | | | |
| 13 | | | | | | | | | | |
| 14 | | | | | | | | | | |
| 15 | | 445pm | | | | | | | | |

SAINT LOUIS, MO. MAY 15 1985 USPO

Exhibit 12

TOTAL NUMBER OF PIECES LISTED BY SENDER: One

TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE: One

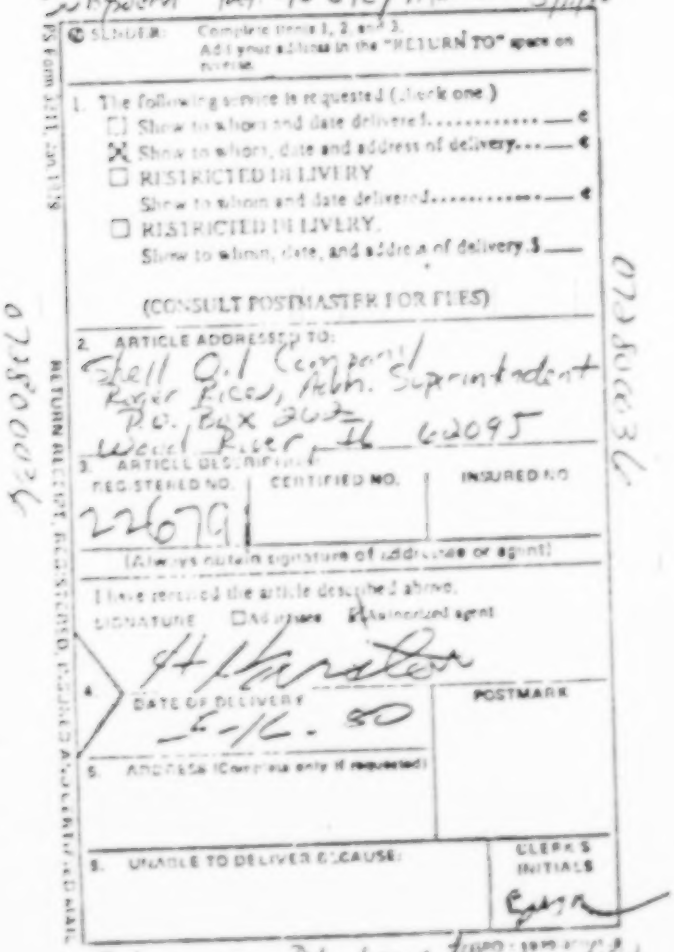
POSTMASTER, PER (Name of receiving employee): D Thompson

Declaration of value is required on international registered mail.
Special-handling charges apply only to third- and fourth-class parcels. Special-delivery service also includes special-handling service.

FORM MUST BE [illegible]LETED BY TYPEWRITER, INK OR BALL POINT PEN

5B

Subpoena Del. to CIC/Marlow 5/5/10



SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered..... ¢
- ☒ Show to whom, date and address of delivery..... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered..... ¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery $ ____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Shell Oil Company
Roger Rice, Admin. Superintendent
P.O. Box 202
Weeks River, IL 62095

3. ARTICLE DESCRIPTION

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| 22679 | | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☒ Authorized agent

4. DATE OF DELIVERY 5-11-10

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

PS Form 3811, July 1983 RETURN RECEIPT, REGISTERED, CERTIFIED, AND INSURED MAIL

7200052

02 5000 36

Subpoena Rel to CIC/Marlow 5/5/10

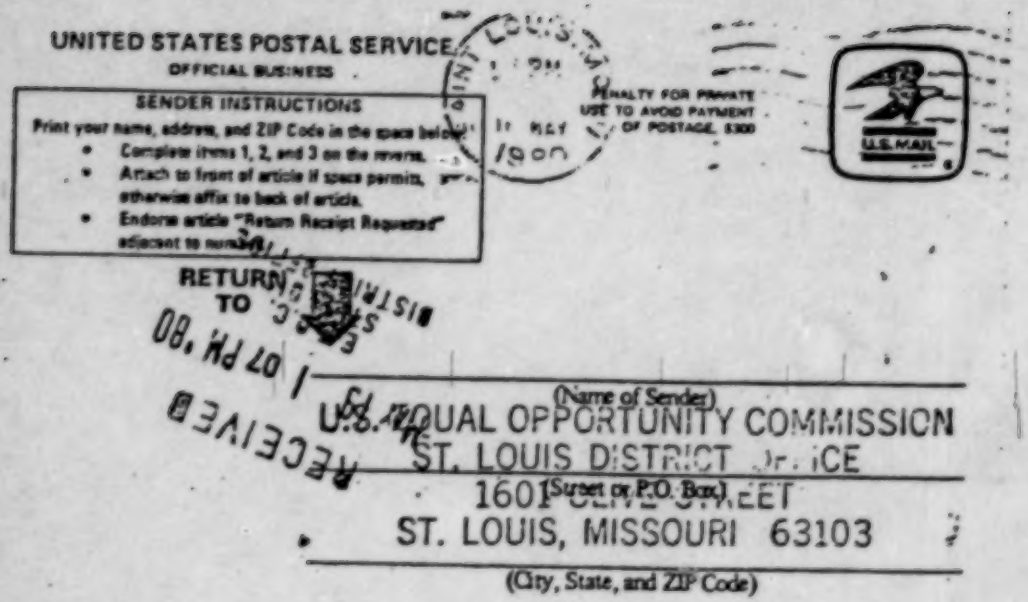

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS
SENDER INSTRUCTIONS
Print your name, address, and ZIP Code in the space below.
• Complete items 1, 2, and 3 on the reverse.
• Attach to front of article if space permits, otherwise affix to back of article.
• Endorse article "Return Receipt Requested" adjacent to number.
PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300
U.S. MAIL
RETURN TO
RECEIVED
U.S. EQUAL OPPORTUNITY COMMISSION
ST. LOUIS DISTRICT OFFICE
1601 OLIVE STREET
ST. LOUIS, MISSOURI 63103
(Name of Sender)
(Street or P.O. Box)
(City, State, and ZIP Code)

EXHIBIT J—PETITION TO REVOKE OR MODIFY SUBPOENA

COMMISSIONER'S CHARGE
No. 072800036

In the Matter of

ELEANOR HOLMES NORTON

*v.*

SHELL OIL COMPANY

---

PETITION TO REVOKE OR MODIFY SUBPOENA NO. 80-35

TO THE ST. LOUIS DISTRICT DIRECTOR
OF THE EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION:

On behalf of Porter E. Slack, Manager, Industrial Relations of Shell Oil Company's Wood River, Illinois refinery, we respectfully submit this petition to revoke or modify Subpoena No. 80-35 which has been issued in the above matter. A copy of the Subpoena is appended as Attachment A.

1. The Subpoena should be revoked in its entirety for the following reasons:

a. The Commissioner's Charge herein has been wrongfully filed without reasonable or sufficient cause. The charge does not comply with the text or purpose of section 706(b) of title VII, which requires that all charges "shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires." Further, it does not comply with the text or purpose of section 1601.12 of the Commission's own internal regulations, which provide that a charge should contain "a clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices." These provisions are intended to prevent the burdening and harassing of employers in unwarranted

circumstances. Such are the circumstances here. Shell's Wood River, illinois refinery has an admirable record with respect to equal employment opportunities. As detailed in a letter to you from Shell, dated March 7, 1980, blacks and women constitute, respectively, 4.7% and 8% of the available labor market for the Wood River refinery. Since the effective date of the Civil Rights Act of 1964, 12.3% of the employees hired at Wood River have been black and 9.8% have been women. As a result of these affirmative action efforts, blacks are employed at Wood River at almost twice the precentage of their availability and women are employed at approximately the same percentage of their availability. Moreover, the Wood River hiring rate for blacks and females from 1977 through 1979 significantly exceeded their availability in the labor market, and the promotion of blacks and females from 1977 through 1979 exceeded their representation in the internal work force. There has been no EEOC individual charge of race or sex discrimination filed by an employee of the Shell Wood River refinery for the last six years, and only two charges have been filed in the last ten years, both of which were dismissed. The EEOC has applied an arbitrary targeting procedure that in no way relates to any sufficient or reasonable cause for issuance of Commissioner Charges.

b. Title VII does not contemplate or authorize an audit review procedure of simply issuing Commissioner Charges for securing access to documents in order to then determine if there is any cause to believe that discrimination has occurred.

c. The Subpoena violates Shell's right to due process guaranteed by the Fifth Amendment to the Constitution. For the purpose of this allegation, Shell realleges each and every point contained in subparagraphs a and b of this petition. Despite repeated requests from Shell, the EEOC has failed to provide Shell with the facts or dates of any alleged unlawful employment practices. In circumstances such as these, where Commissioner Norton's Charge is unfounded and where

Shell has made persistent good faith affirmative efforts to comply with Title VII, the issuance of the Commissioner Charge and the subsequent Subpoena violate Shell's rights of due process.

d. The Subpoena states that any compilations or summaries requested are to be provided to the extent that they "are maintained or can be produced through computer or other mechanical sources available to the respondent to produce such materials." Thus, the Subpoena requires Shell to utilize its computer resources to create documents and summaries that do not now exist. This requirement to make compilations is inconsistent with Title VII and the Subpoena authority of EEOC under Title VII. This deficiency applies to many of the Requests in part or in whole from Nos. 1 through 29 (particularly Requests 4, 5, 8, 10, 11, 13, 16, 23, 25 and 29).

e. Under the terms of section 10 of Title VII—which adopts section 11 of the National Labor Relations Act—a subpoena for the production of evidence shall be revoked where it is determined that the evidence sought "does not relate to any matter under investigation." This standard of relevance is narrower than the "reasonably calculated to lead to discovery of admissible evidence" standard provided for in Federal Rule of Civil Procedure 26(b). Particularly in light of the absence of any definition of the alleged discriminatory acts being investigated, the information sought in Items 1 through 29 is not relevant.

f. Particularly with respect to Items 4-6, 10-15, 17-23, 25-26 and 28-29, the documents requested would be extremely costly and burdensome to produce. This burden would substantially interfere with the operations of the facility. In order to furnish the requested material to the Commission, Shell would have to perform an extensive search for and duplication of material at an onerous cost in time, labor and money. Though ambiguous, the items could require review of most, if not all, of the personnel files of the facility and under Item 29 a statement of the custodian of each such per-

sonnel record. For example, Item 10 calls for a search, collection, and description of "each report regularly or specially prepared by or for the Company at any time since 1977" concerning personnel actions. Obviously, searching for and collecting these materials would impose a great burden.

g. The Equal Employment Opportunity Commission has not given Shell necessary assurances that it will not provide the documents requested in Items 1 through 29 to outside consultants. It is our understanding that EEOC frequently retains an outside consultant by contract to review investigatory materials, particularly computer data. In so doing, EEOC provides the contract consultant with company records, tapes or related documents. This practice violates the text and purpose of Title VII and implementing regulations. In these circumstances, it is appropriate to refuse to provide the requested information without an assurance from EEOC that access to any data supplied by Shell will not be provided to a contract consultant or any other individual not an employee of the government.

h. EEOC has not made necessary provisions for advance payment for any and all documents which Shell must reproduce or for the costs that may be incurred.

i. The request for information format used here, which is the subject of the Subpoena, has been issued in violation of the Federal Reports Act, 44 U.S.C. § 3509, and Executive Order 12174 and is, therefore, unenforceable. In light of the procedures used here and, apparently, in other cases, these form requests for information require prior review and a provision of a clearance number by the Office of Management and Budget.

j. To the extent that the items call for manual compilations or are in the nature of interrogatories, they are inappropriate for the reason indicated in subparagraph d. above.

k. In many respects, the subpoena is internally inconsistent, ambiguous and incapable of being re-

sponded to in any reasonable manner. For example, it begins with the statement that, "Each numbered item shall apply to all departments, employees and positions . . . at any time since 1965, unless otherwise indicated." The next paragraph, however, requires that "Each item is to be answered separately for each year from January 1, 1976 to the present, unless otherwise indicated." The Subpoena provides two inconsistent "instructions." Further, the definition of "Test" is completely unintelligible:

> . . . any paper and pencil or performance measure used as two (2) basis for any employment decision . . .

Ambiguity also appears in Item 4. It asks for "Lists or documents which show for each year as of April 1, 1978, and April 1, 1979" certain information. Is Shell supposed to produce only documents (or "Lists") which relate to these specific dates or bear such dates, or does the subpoena specification call for something different? The same holds true for Item 5, which is worded in the same fashion.

2. Except for Items 2 and 29, the Subpoena should be modified or revoked because it requests extensive documentation regarding events occurring more than 180 days prior to the filing of the Commissioner's Charge. Charges filed under Title VII are limited to events occurring within 180 days prior to the date on which the charge is filed. Reaching back to an earlier time period for burdensome requests is inappropriate.

3. Items 25, 26, 27 and 28 should be revoked because the information sought regarding Shell's Wood River computer files and computer capability is irrelevant to the Commissioner's Charge. The information obviously is sought merely as background information for a further request by the Commission that Shell compile information for the EEOC by use of its computer capability. Such compilations are not required under the case law, and, therefore, this request regarding computer files and computer capability need not be fulfilled.

4. Items 2, 3, 4, 5, 7, 8 and 11 should be revoked or modified because the information sought in these items is either completely or partially duplicative of information already provided by Shell to the government.

5. Items 7, 10, 16 and 22-29 should be revoked or modified in whole or in part because they contain confidential and privileged information including trade secrets and other business data. For example, Items 7 and 10 request hiring or growth projections by job groups the disclosure of which would be to the competitive disadvantage of the Company.

6. Items 1, 5, 8, 10, 11, 14 and 19 should be revoked or modified in whole or in part because the subpoena for the information requested in these items is inappropriate. The District Director and the Commission have made no prior request for the information sought in these items in compliance with section 709(a) of Title VII.

RESPECTFULLY SUBMITTED,
MARTIN SCHNEIDERMAN
MARK GOODWIN
Steptoe & Johnson
1250 Connecticut Avenue
Washington, D.C. 20036
202/862-2000
Attorneys for Petitioners

EXHIBIT K—DETERMINATION ON PETITION

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1601 Olive Street
St. Louis, Missouri 63103

Charge No. 072800036
Subpoena No. SL-80-35

IN THE MATTER OF:

ELEANOR HOLMES NORTON

v.

SHELL OIL COMPANY

Addressee:
Roger Rice, Administrative Superintendent
P.O. Box 262
Wood River, Illinois 62095

DETERMINATION OF PETITION
TO REVOKE OR MODIFY SUBPOENA

Respondent/Petitioner (hereinafter Respondent) having been served with a subpoena duces tecum issued by the Director of the St. Louis District Office, pursuant to Section 710 of Title VII of the Civil Rights Act of 1964, as amended, has timely filed a petition to revoke or modify the subpoena. Having reviewed the subpoena and the record in the case, the District Director, pursuant to the Commissioner's regulations, 29 C.F.R. 1601.19(b), hereby denies in part and grants in part the petition to revoke or modify for the reasons stated below.

For the most part, Respondent's petition is not in conformity with the requirements of the Commission's Procedural Regulations[1] insofar as Respondent fails to identify the specific portions of the subpoena with which Respondent does not intend to comply and the grounds on which Respondent relies. However, I will respond to Respondent's objections in turn.

[1] 29 C.F.R. Section 1601.16(b).

Respondent first contends that the Commissioner's charge has been filed without cause and does not comply in form with the Commission's internal regulations in that a clear and concise statement of the facts constituting the alleged unlawful employment practices is not contained within the charge. The Commisioner's charge against Respondent was issued pursuant to and in conformity with the published standards for the selection of systemic respondents contained in Section 16.2 of the Equal Employment Opportunity Commission Compliance Manual, and pursuant to the published authority for the issuance of Commissioner's charges, contained in the Commission's Procedural Regulations, 29 C.F.R. Section 1601.11. The charge specifically sets out in two numbered paragraphs the alleged unlawful employment practices which are the subject of the investigation. It is not necessary that a Commissioner's charge contain specific incidents of discriminatory acts or practices. *New Orleans Public Service, Inc.* v. *Brown*, 507 F.2d (5th Cir. 1975); *Spartan Southwest, Inc.* v. *EEOC*, 461 F.2d 1055 (10th Cir. 1972); *Sheetmetal Workers* v. *EEOc*, 439 F.2d 237 (9th Cir. 1971). Accordingly, Respondent's objection fails.

Respondent next contends that the Commission is utilizing a Commissioner's charge for the purpose of conducting an "audit review" of Respondent's Wood River Facility. This argument has been answered above.

For its next objection, Respondent states that the subpoena violates its Fifth Amendment right to due process of law. In support thereof, Respondent realleges generally its first two arguments relating to the authority of the commission to issue the charge and specifically alleges that the Commission has failed to provide Respondent with facts and dates relating to the discriminatory practices alleged in the charge. Respondent's first two objections have been answered above. As for Respondent's "notice" argument, the Commissioner's charge issued against Respondent contains specific allegations of discriminatory employment practices utilized by defendant with respect to Blacks and females in certain specified job categories. As specific incidents of discriminatory acts or practices need not be alleged (*Spartan*

*Southwest, Inc.* v. *EEOC*, *supra*; *Sheetmetal Workers* v. *EEOC*, *supra*), the subpoena will not be modified or revoked for this reason.

Respondent next takes the position that any portion of the subpoena which requires Respondent to utilize computer or other mechanical sources available to it to produce compilations or summaries is outside the scope of the Commission's subpoena authority. The courts have held that the Commission's investigatory powers are sufficiently broad to encompass the authority to require a respondent to make compilations. *New Orleans Public Service, Inc.* v. *Brown*, *supra*; *Motorola, Inc.* v. *McLain*, 484 F.2d 1339 (7th Cir. 1973). See also *Local 104, Sheet Metal Workers* v. *EEOC*, *supra*; *Georgia Power Co.* v. *EEOC*, 412 F.2d 462 (5th Cir. 1969). Accordingly, Respondent's argument fails.

Respondent next contends that all of the documents which are the subject of the subpoena are irrelevant under the standard set forth in Section 11 of the National Labor Relations Act in that the documents requested do not "relate to any matter under investigation." It is the Commission, not the party being investigated, that must determine what material is relevant to the investigation. *EEOC* v. *University of New Mexico*, 504 F.2d 1296 (10th Cir.1974). The Commission, after reviewing the information requested, has concluded that all of the information sought is both relevant and material to the allegations under investigation. See *EEOC* v. *Western Publishing Co., Inc.*, 502 F.2d 599 (8th Cir. 1974). The Commission must also be allowed to determine what is relevant evidence so that it can then decide whether or not there is reasonable cause to believe that Respondent is engaged in discriminatory employment practices *Pacific Maritime Assoc.* v. *Quinn*, 491 F.2d 1294 (9th Cir.1974); See also, *Blue Bell Boots, Inc.* v. *EEOC*, 418 F.2d 355 (6th Cir. 1969).

Respondent next advances the argument that compliance with the subpoena will be burdensome. The Commission recognizes that the production of the documents requested will put some burden on the Respondent. We note, however, that burdensomeness, expense and inconvenience are inherent in any compulsory process *H. Kessler Co.* v.

*EEOC*, 53 FRD 330 (N.D.Ga. 1971), aff'd, 469 F.2d 25 (5th Cir. 1972). Once it is established that the evidence sought is relevant, a mere assertion of burdensomeness is not a basis for non-compliance. *New Orleans Public Service, Inc.* v. *Brown, supra; Circle K Corp.* v. *EEOC*, 501 F.2d 1052, 8 EPD 9599 (10th Cir. 1973). The Commission has determined that the evidence sought is relevant. Respondent has not provided facts sufficient to establish that compliance will work an undue hardship on it. Accordingly, the Commission cannot credit Respondent's contention of burdensomeness.

Respondent contends that it need not comply with the Commission's subpoena because no assurances have been given that the documents requested will not be released to outside consultants for analysis. The Commission has been charged with the responsibility of investigating and redressing alleged violations of Title VII. In the process of discharging this duty, it sometimes is necessary for the commission to contract out work which is more efficiently and economically performed by outside consult. Statutory authorization for this can be found in Section 709(a) of Title VII which states as follows:

> "In connection with any investigation of a charge filed under Section 706, the Commission or *its designated representative* shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation." (emphasis added)

Any contract with an outside consultant would routinely contain a provision that the confidentiality of any information received from the Commission be maintained.

Respondent next states, as a ground for revocation of the subpoena, that no provisions for advanced payment for the cost of compliance have been made. It is well settled that an assertion of expense for compliance cannot justify refusal to comply where the subpoenaed information is relevant to the charge. *H. Kessler & Co.* v. *EEOC*, *supra*. Further, Respondent has never made any request for advance pay-

ment of the costs it may incur in complying with the subpoena. The Commission is authorized to contribute toward the costs of compliance and will make arrangements to do so when these expenses become less speculative.

Respondent next argues that the request for information which is the subject of the Commission's subpoena has been issued in violation of the Federal Reports Act, 44 U.S.C. Section 3509 and Executive Order 12174. Respondent misapplies these enactments. The request for information previously submitted to Respondent is not a form request which is uniformly sent out to all respondents who are the subject of a Commissioner's charge. Each such request is tailored to the specific respondent and allegations involved in the charge. Accordingly, Respondent's argument fails.

Respondent next maintains that insofar as the subpoena requests Respondent to make manual computations, it should be revoked as compilations are not the proper subject of the subpoena. As stated above, the courts have held that the Commission's investigatory powers include the authority to require a respondent to make lists or compilations. See p. 2, infra. However, a close reading of the subpoena will reveal that the Commission has asked only for manual compilations or lists, *if* maintained by Respondent. Otherwise, documents are to be produced. The only compilations that Respondent is asked to make for purposes of complying with the subpoena are those which can be produced through computer or other mechanical sources available to Respondent.

Respondent contends that the subpoena is ambiguous and inconsistent. We do not agree. An administrative subpoena need only describe documents with sufficient particularity to identify to the petitioner the nature of the information sought. *Brown* v. *United States*, 276 U.S. 134 (1927); *Oklahoma Press Publishing Co.* v. *walling*, 327 U.S. 186 (1946). The request meets this standard. The instructions on page one of the subpoena which Respondent points to as being inconsistent are indeed consistent. The sentence which is worded "Each numbered item shall apply to all departments, employees and positions ... at any time since 1965, unless otherwise indicated" defines the *object* of each

request. The next sentence "Each item is to be answered separate for each year from January 1, 1976, to the present, unless otherwise indicated" defines the time limits for each request. Items 4 of the subpoena is also clear. The item requests certain enumerated information relating to job titles in existence as of April 1, 1978, and as of April 1, 1979. However, in so far as Respondent has indicated that the subpoena is ambiguous with respect to the definition of "Test," the subpoena shall be modified to read as follows:

> "'*Test*' refers to any paper and pencil or performance measure used as a basis for any employment decision including, but not limited to, any measure of general intelligence, knowledge, specific intellectual abilities, physical abilities, technical skills, mechanical, clerical, or other aptitudes, dexterity and coordination, knowledge and proficiency, occupational and other interest, attitudes and personality;..."

Respondent next asserts that the subpoena should be modified or revoked because, except for Items 2 and 29, it requests information which occurred outside the relevant time period. Respondent asserts that the relevant time period is six months. The temporary scope of the Commission's investigation is not limited to any specified amount of time, so long as the information sought is relevant to the charge. Since actions gain meaning by reference to other actions which surround them in time, the Commission is entitled to review documents spanning a length of time in order to establish whether discriminatory patterns exist in Respondent's employment practices. *EEOC* v. *Univeristy of New Mexico*, *supra*. As the time frames set out in the subpoena are not unreasonably lengthy, the subpoena will not be revoked on this ground.

Respondent argues that Items 25, 26, 27 and 28 should be revoked as irrelevant since they request information regarding Respondent's computer capabilities. The Commission does not agree. These items were designed to elicit information which in the event that future data requests are necessary, the requests can be framed in a manner most suitable to Respondent's capacity to produce the requested

information. To this end, the information requested in 25, 26, 27 and 28 is relevant and must be produced.

Respondent contends that Items 2, 3, 4, 5, 7, 8 and 11 should be revoked because the information requested has already been provided to the government. This assertion is unsupported by any proof whatsoever. However, even if it were so, none of the information requested has been previously supplied to the Equal Employment Opportunity Commission. The subpoena will not be revoked or modified because it is duplicative as Respondment maintains.

Respondent claims that Items 7, 10, 16 and 22-29 should be revoked or modified because they request information which is confidential and privileged. The information requested is not privileged so as to exempt it from discovery. The Commission has the right during the investigation to compel production of any material or evidence that is relevant to any claim made in the charge. *EEOC* v. *General Electric Co.*, 532 F.2d 355 4th Cir. 1976). The touchstone of relevancy is that the information relates to or touches upon the matter under investigation. *Motorola* v. *McLain*, *supra*. The Commission concludes that the information requested relates to and touches upon the matter under investigation and as such is discoverable evidence. As for Respondent's confidentiality objection, the Commission is satisfied that the prohibition against disclosure of information provided for in Section 709(e) of Title VII is a sufficient safeguard that no breach of confidentiality will occur.

Finally, Respondent contends that Items 1, 5, 8, 10, 11, 14 and 19 should be revoked because they request documents and information not previously requested. To the contrary, the Commission's First Data Request included substantially the same requests for information as did the subpoena, although not necessarily in the same form. Furthermore, the Commission's letter of April 11, 1980 contained Attachment B which requested all of the information requested in the subpoena. Accordingly, the subpoena will not be revoked or modified.

DETERMINATION:

Respondent's petition to revoke is denied. The subpoena is modified to the extent noted above and to the extent that the addressee, Roger Rice, is directed to appear before Terry Marlow, of the United States Equal Employment Opportunity Commission, at 1601 Olive Street in the city of St. Louis, Missouri on Wednesday, June 25, 1980 at 10:00 o'clock a.m. of that day at said time and place and produce all of the documents and records described in the subpoena.

FOR THE COMMISSION:

/S/ JOHN F. NICHOLSON
for
W. ED. MANSFIELD
*District Director*

JUNE 9, 1980

EXHIBIT L— APPEAL OF DETERMINATION

BEFORE THE UNITED STATES
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Commissioner's Charge
No. 072800036

IN THE MATTER OF

ELEANOR HOLMES NORTON, PETITIONER,

*v.*

SHELL OIL COMPANY, RESPONDENT.

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**APPEAL OF PETITION TO REVOKE OR MODIFY SUBPOENA SL-80-35**

TO THE GENERAL COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

Pursuant to 29 C.F.R. § 1601.16, Shell Oil Company ("Shell") and Porter E. Slack, Manager, Industrial Relations, and Shell's Wood River, Illinois Refinery, respectfully submit this appeal of a determination by St. Louis District Director W. Ed Mansfield partially denying Shell Oil Company's Petition to Revoke or Modify Subpoena SL-80-35. A copy of the subpoena is appended as Attachment A, Shell's Petition to Revoke or Modify Subpoena ("Petition") is attached as Exhibit B, and the District Director's Determination on Petition to Revoke or Modify Subpoena ("Determination") is attached as Exhibit C.

As part of this appeal, Shell resubmits and incorporates by reference each of the arguments in its Petition. Shell requests that the General Counsel of the Equal Employment Opportunity Commission ("Commission") reexamine the District Director's refusal to recognize the merit of Shell's position and overrule the District Director's contentions as set forth in the Determination.[1]

## I. CONGRESS DID NOT INTEND TO REDUCE THE CHARGE-FILING PROCESS TO A HOLLOW CHARADE

In rejecting the arguments contained in paragraphs 1(a)-(c) of Shell's Petition, the Determination misconstrues Shell's position as simply raising technical pleading objections. Shell's arguments are far broader. The Petition raises questions with respect to the Commission's compliance with statutory and regulatory standards; its failure to provide reasonable notice; and its flouting of procedural safeguards to protect employers against groundless charges.

The core of Shell's objections to the subpoena is that it is based on a conclusory and inadequate charge which is without substantive basis and which violates the Commission's own regulations. The charge filed by Commissioner Norton uses boilerplate language to allege discrimination against blacks and women in broad job categories. Commissioner Norton's affidavit only offers the conclusory statement that she has "cause" to believe that Shell committed the unlawful employment practices set forth in the charge.

If this sham procedure were sufficient to satisfy the requirements of Section 706 of the Civil Rights Act, then Congress was wasting its time in requiring that all charges "shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires." Why require the Commission to proceed on the basis of sworn charges, if a charge need not be based on minimum standards of specificity and credibility?

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[1] The District Director contends that:

> For the most part, Respondent's petition is not in conformity with the requirements of the Commission's procedural regulations insofar as Respondent fails to identify the specific portions of the subpoena with which Respondent does not intend to comply and the grounds on which Respondent relies.

Determination at 1. Contrary to this characterization, each numbered paragraph of Shell's Petition explicitly states that it seeks revocation either of every item within the subpoena or of certain identified items within the subpoena. Shell's position on each objection is quite clear. Indeed, the Determination itself reflects that the District Director experienced no difficulty in identifying each of the subpoena items to which Shell objected in its petition.

In fact, the Commission has established such standards, with which Commissioner Norton's charge does not comply. Section 1601.12 of the Commission's regulations provides that a charge should contain "a clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices." The District Director's apparent response is that this regulation does not mean what it says, but rather that "it is not necessary that a Commissioner's charge contain specific incidents of discriminatory acts or practices." Determination at 2. such a conclusion does not comport with the plain Congressional intent that the oath requirement be part and parcel of a duty assumed by filing parties—including Commission members—not to file charges without foundation.

As originally enacted, Title VII permitted a member of the Commission to file a charge under the Act, in writing, when he or she had "reasonable cause" to believe a violation of the Act had occurred. However, in 1972 Congress amended Section 706(b) to require Commissioner charges to be filed "in writing under oath or affirmation" and to contain the information which the Commission requires.[2] By this amendment, Congress intended to hold the Commission to a *higher* standard for filing a Commissioner's charge than it had under the old reasonable cause standard. *Equal Employment Opportunity Commission* v. *Appalachian Power Company*, 13 F.E.P. Cases 1294 (W.D. Va. 1976), *aff'd for reasons set forth by District Court*, 568 F.2d 354 (4th Cir. 1978); *Stewart* v. *Core Laboratories, Inc.*, 460 F. Supp. 931 (N.D. Tex. 1978). The intent of Congress and the meaning of Section 706(b) are that employers are to be protected against harassing and baseless charges filed either by members of the public or by Commissioners. The conclusory allegation that a charge has been issued for "cause" is not sufficient.

Though some courts have permitted broad investigations based on seemingly narrow charges, no court has permitted

[2] Congress can be presumed to have been aware that the Commission had promulgated regulations containing the requirements of present § 1601.12, calling for detailed factual support for allegations contained in charges, as early as 1966. 31 Fed. Reg. 10269 (July 29, 1966).

an open-ended investigation based on no charge at all, the approach attempted by the Commission in this case. Commissioner Norton has not offered even a single allegation of an instance of concrete discrimination in support of her charge. As the Petition shows, no individual charge has been filed with the Commission against the Wood River Refinery for six years. Over the past decade, only two discrimination charges have been filed against the facility, both of which were dismissed by the Illinois Fair Employment Practices Commission.[3] Nor does the statistical data now in the Commission's possession provide a basis for finding reasonable cause. Such data, much of it provided by the respondent, reflects that the Wood River Refinery has hired and maintained a workforce in which blacks and women are represented at levels equal to or greater than their availability in the appropriate labor market.[4] It can only be concluded that the Wood River Refinery has been selected for enforcement action on the arbitrary and capricious basis that a facility in the petroleum refinery industry represents an attractive "target of opportunity" for the Commission.

In summary, the Determination fails to show that a legal basis exists for issuance of a charge. The data available does not serve to support the actions taken here. Title VII does not authorize the Commission to take an "audit" approach in issuing charges and investigating companies: such audit functions, to the extent they are authorized, are within the jurisdiction of the Office of Federal Contract Compliance Programs ("OFCCP").[5] Nor did Congress intend to permit this Commission to use Commissioner's charges as a

[3] One of those two charges was also filed with this Commission, which administratively closed the case after the Illinois Commission dismissed the charge.

[4] *See* letter to the District Director from Mr. R. B. Rice, Administrative Superintendent, Wood River Refinery, dated March 7, 1980.

[5] In addition, such duplication of functions, in the context of requiring extensive form reports from a private respondent, contravenes the purposes and directives of Executive Order 12174, which seeks to eliminate duplicative federal paperwork burdens on the public (44 Fed. Reg. 69609 (November 30, 1979)).

device to initiate broad "fishing expedition" discovery against arbitrarily designated employers.

The Determination addresses Shell's due process arguments in much the same way as it does the sufficiency of the charge, by arguing that a simple assertion of discrimination suffices to meet all statutory and regulatory requirements. However, if the Commission has issued the charge without consideration of whether any factual basis for it exists, it has violated Shell's due process rights to be free of arbitrary and capricious agency action, including unwarranted charges and investigation.

## II. SHELL CANNOT BE REQUIRED TO COMPILE DATA FOR THE COMMISSION

In paragraph 1(d) of the Petition, Shell objects to the Commission's use of a subpoena to require Shell to devote its programming and computing resources to perform compilations and develop new "documents." The Determination maintains that the Commission's investigatory powers extend to taking dominion over Shell's computers and programming staff. There is considerable precedent to the contrary: the Commission is not authorized to burden Shell with substantial time and expense of developing the compilations requested. See *Georgia Power Company* v. *EEOC*, 295 F. Supp. 950 (N.D. Ga.), *aff'd*, 412 F.2d 462 (5th Cir. 1969); *Joslin Dry Goods Co.* v. *EEOC*, 336 F. Supp. 941 (D. Colo. 1971), *aff'd in part and reversed in part*, 483 F.2d 178 (10th Cir. 1973). The Determination recognized the weak ground on which the Commission stands with respect to this issue when it disclaimed any intent to require Shell to perform manual compilations (see paragraph 1(j) of the Petition, Determination at 4). The same arguments apply to computer compilations, where such compilations are not otherwise performed in the ordinary course of business. It is impermissible for this Commission to burden Shell with the task of generating data for an unfocussed and open-ended investigation.

## III. THE SUBPOENA MUST BE LIMITED TO DOCUMENTS WHICH ARE RELEVANT TO THE UNDERLYING CHARGE

In paragraph 1(e) of the Petition, Shell objects to the lack of any showing of relevance as to most of the subpoena. This objection underlines the absence of any explanation or factual detail in Commissioner Norton's charge. Relevance must be established by reference to adequate and specific charges. Where only vague and conclusory accusations are made, there is no reasonable method to assess whether information requested in a subsequent subpoena is relevant or not. In any event, items 25-28, relating to the computer capabilities of Shell, are patently beyond the relevant scope of the investigation (see paragraph 3 of the Petition).

## IV. THE SUBPOENA IS BURDENSOME

The response of the District Director to Shell's burden objections (paragraph 1(f)) is confusing. The Determination initially takes the position that excessive burden is simply not a basis for objection to a relevant investigation. However, as previously noted, relevance has not been established; moreover, the arguable relevance of a subpoena request does not *per se* excuse the Commission from the duty of focusing its investigation without imposing undue hardship on the respondent.

The Determination then changes position, asserting no undue hardship has been shown. Thus, on one hand the District Director says that burden is not the basis for objection, and on the other hand claims that burden has not been factually established. The undue burden which the subpoena imposes is apparent even from a cursory review of its specifications. For example, specifications 4, 11, 19, 20, 21 and 22 request information which Shell does not maintain in a readily accessible form. Its retrieval will require inordinate search time. To respond to just one of these objectionable specifications, specification 22, Shell would have to search the personnel files of over 2500 current and former employees. The search would require at least 180 work days to assemble the information. This estimate does not include reproduction, clerical or attorney review time.

When those factors are added in and multiplied for just the cited specifications, the burden mandated by the subpoena is obvious.

## V. THE COMMISSION HAS REFUSED TO RECOGNIZE ITS LEGAL OBLIGATION TO PROTECT CONFIDENTIAL DATA

With respect to pragraphs 1(g) and 5 of the Petition, the District Director confirms the practice of disclosing investigatory materials to outside contract consultants. According to the Determination, such a contractor is a "designated representative" of the Commission for review of the files pursuant to Section 709(a) and is not otherwise precluded by title VII from obtaining confidential data submitted by the respondent (Determination at 3-4). This assertion ignores the clear mandates of Section 706(b) and 709(b) of Title VII. These provisions preclude disclosure of investigatory materials to the public. Shell regards the disclosure of investogatory materials to a private government contractor to be disclosure to the public and violative of the statutory provisions even if the contract has a confidentiality provision.

To date, courts have indicated that these disclosure proscriptions are to be strictly construed. Indeed, the courts have found the Commission's regulations authorizing disclosure of these materials to charging parties as violative of Title VII. See, *e.g.*, *Sears Roebuck & Co.* v. *EEOC*, 581 F.2d 941 (D.C. Cir. 1978); *Burlington Northern, Inc.* v. *EEOC*, 582 F.2d 1097 (7th Cir. 1978); *cert. denied* 440 U.S. 930 (1979); **EEOC** v. *Association Dry Goods Corp.*, 607 F.2d 1075 (4th Cir. 1979, *cert. granted*, Sup. Ct. (1980). *A fortiori*, these cases bar the release of confidential data to a third party contractor.

## VI. THE COMMISSION HAS NOT PROVIDED FOR ADVANCE PAYMENT OF SHELL'S COSTS

With respect to paragraph 1(h) of the Petition, the Determination states that Shell "has never made any requests for advance payment of the costs that it may incur in complying with the subpoena. The Commission is authorized to contribute toward the cost of compliance and will make ar-

rangements to do so when these expenses become less speculative." Determination at 4. As to the first statement, it is sufficient to point out that a request for payment before the issuance of the subpoena might have been regarded as premature. In any event, the Petition provides ample notice that Shell now requests such payments for any expenses necessary for responding to the subpoena. As to the second point, the Determination is in error. The Commission cannot require Shell to respond to the subpoena before advance payments are made simply because costs are regarded as "speculative." The courts have held that the standards established for subpoenas under Rule 45(b) of the Federal Rules of Civil Procedures also apply to the Commission's subpoenas. That rule requires "advancement by the person in whose behalf the subpoena is issued of the reasonable costs of reproducing the books, papers, documents, or tangible things" sought in the subpoena. See, *e.g.*, *New Orleans Public Service Commission* v. *Brown*, 509 F.2d 160, 165 (5th Cir. 1975).

## VII. THE SUBPOENA VIOLATES THE FEDERAL REPORTS ACT

As to the compliance with the Federal Reports Act issue raised in paragraph 1(i) of the Petition, the determination states that the request for information is not a "form request which is uniformly sent out to all respondents who are the subject of a Commissioner's Charge. Each such request is tailored to the specific respondent and allegations involved in the charge." Determination at 4. The Determination thus suggests that the rearranging of the format and the addition or deletion of certain boilerplate questions provides an exemption from the Federal Reports Act. This position misconstrues the purpose and effect of the Act. In order for Sections 3509 and 3512 of the Act to apply, the request for information, or one substantially similar to it, need only be used for collection of information from ten or more charged parties rather than from "all respondents who are subject to a Commissioner's Charge," as the Determination contends. That there may be occasional changes and rearrangements of the form questions certainly cannot be the basis of a valid exemption from the Act's

requirements.[6] Moreover, the argument at page 6 of the Determination that the Commission is free to seek information already provided by Shell to other government agencies (see paragraph 4 of the Petition) provides a textbook example of the abuses which the Federal Reports Act was enacted to correct.

## VIII. THE SUBPOENA SHOULD BE LIMITED TO THE PERIOD FOR WHICH ACTIONABLE TITLE VII VIOLATIONS COULD CONCEIVABLY BE FOUND

Assuming that the Determination's discussion of time limits (at page 5) constitutes an admission that the reference to 1965 was merely an overlooked piece of Commission boilerplate (see sections I and VII, *supra*), it now appears that the subpoena seeks data going back to January 1, 1976.[7] As the Supreme Court has definitively ruled in *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324 (1977), and *United Air Lines* v. *Evans*, 431 U.S. 553 (1977), discrimination and allegations of discrimination occurring more than 180 days before the filing of a Title VII charge are relevant, if at all, merely as background information. Where the ostensible purpose of an investigation is to determine "reasonable cause" rather than ultimate liability, such "background information" has no value whatsoever. If reasonable cause cannot be discerned from actions and practices during the liability period, it cannot be supplied from prior occurrences. Accordingly, the scope fo the subpoena should be limited to the appropriate liability peri-

[6] In a similar instance involving "desk audit" questions asked by OFCCP, the Office of Management and Budget directed OFCCP to stop collecting the requested information until approval of the forms had been requested and obtained. *See* BNA Daily Labor Report, March 16, 1979, at A-5–A-8.

[7] This apparent concession is based on a distinction, perceived by the District Director, between the "object" and the "limits" of each request. In this and other instances, the Determination's discussion of the ambiguities contained in the subpoena (see paragraph 1(k) of the Petition) is by no means clear. Shell reiterates that ambiguities remain in the subpoena requests, even with respect to those elucidated in the Determination.

od, 180 days before the date of Commissioner Norton's charge.

RESPECTFULLY SBUMITTED,

/s/ MARTIN SCHNEIDERMAN
MARTIN D. SCHNEIDERMAN
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EXHIBIT M—DETERMINATION OF APPEAL PETITION

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20505

Office of the
General Counsel

Charge No. 072800036
Subpoena No. SL-80-35

IN THE MATTER OF:

ELLANOR HOLMES NORTON, CHARGING PARTY,

*v.*

SHELL OIL COMPANY, RESPONDENT.

ADDRESSEE:
Mr. Roger Rice
P.O. Box 262
Wood River, Illinois 62095

DETERMINATION ON APPEAL PETITION

Respondent-Appellant (hereinafter Respondent) has timely filed an Appeal from a Determination of the Director of the St Louis District Office denying Respondent's Petition to Revoke Subpoena. The requisite number of Commissioners having reviewed the Appeal Petition pursuant to the Commission's Procedural Regulations, 29 C.F.R. 1601.16(b), the Commission hereby denies the Appeal Petition to revoke the subpoena.

As part of its Appeal, Respondent resubmitted and incorporated by reference each of the arguments in its initial Petition. Respondent requested that the General Counsel reexamine the District Director's Determination which denied each of Respondent's arguments. It has been determined that the said Determination completely and accurately disputed Resondent's contentions and set forth applicable statutes, rules and case law. Accordingly, the

grounds set forth in the District Director's Determination are adopted herein in full.

In addition, in eight numbered sections in its Appeal, Respondent seeks to clarify or augment arguments raised earlier in its initial Petition. Sections III and VII of the Appeal neither raise new factual or legal issues nor cite cases not previously considered; accordingly, the grounds set forth in the District Director's Determination with respect to those arguments answer those two sections. With respect to the other six sections, which do raise new factual or legal issues and do cite cases not previously considered, each will be considered in turn below.

1. In Section I Respondent repeats its earlier argument that the Commissioner's charge has been filed without foundation and without a clear statement of the facts constituting the alleged unlawful employment practices. The District Director's Determination adequately responded to Respondent's earlier argument, but in its Appeal Respondent amplifies the earlier arguments by discussing the purpose of the 1972 Amendment to Section 706(b) of Title VII, which requires Commissioner charges to be filed in writing under oath or affirmation. Respondent contends that, by this amendment, Congress intended to hold the Commission to a higher standard for filing a Commissioner charge than it had under the original reasonable cause standard. However, the two cases cited by Respondent[1] merely affirm the language of the amendment that the Commissioner charge be filed "in writing under oath or affirmation." In neither its Appeal nor its initial Petition has Respondent contended that that requirement has not been met; nor can they since the Commissioner charge was "in writing under oath or affirmation." Accordingly, Respondent's argument fails.

2. In Section II Respondent reiterates its argument that it cannot be required to compile data for the Commission. The Director's Determination correctly stated EEOC's po-

[1] *EEOC* v. *Appalachian Power Co.*, 13 FEP Cases 1294 (W.D. Va. 1976), *aff'd* for reasons set forth by District Court, 568 F.2d 354 (4th Cir. 1978); *Stewart* v. *Core Laboratories, Inc.*, 460 F. Supp. 931 (N.D. Texas 1978).

sition on that issue. The two cases[2] in its Appeal which Respondent cites in favor of its argument are outside the Eighth Circuit and are not controlling. Accordingly, EEOC must reject Respondent's argument.

3. In Section IV Respondent amplifies its original argument of burdensomeness by estimating the amount of time it would take to respond to just one of the subpoena specifications. The Director's Determination notes EEOC's concern about the burden on Respondent; but nonetheless, "burdensomeness, expense and inconvenience are inherent in any compulsory process." Obviously such expense has a tendency to be greater in the investigation of a broad scale Commissioner charge than in a simple one-on-one case. The District Director in his Determination has already assured Respondent that EEOC is authorized to contribute toward the costs of compliance, thus to an extent alleviating some of the burden and expense.

4. In Section V Respondent repeats its contention that disclosure of investigatory material to a private contractor is a disclosure to the public and violative of statutory provisions. In support of its argument Respondent cites three cases[3] in which three different circuits have found EEOC's regulations authorizing disclosure of investigative material to Charging Parties as violative of Title VII.

None of the above-cited cases expressly forbids the handling of investigative material by a private contractor performing services for EEOC. Rather, each of the cases, as pointed out by Respondent, specifically deals with nondisclosure of Charging Parties who sought such investigative material for their own private purposes. There being

[2] *Georgia Power Co.* v. *EEOC*, 295 F. Supp. 950 N.D. Ga. 1968), *aff'd*, 412 F.2d 462 (5th Cir. 1969); *Joslin Dry Goods Co.* v. *EEOC*, 336 F. Supp. 941 (D.C. Colo. 1971), *aff'd in part and rev'd in part*, 483 F.2d 178 (10th Cir. 1973).

[3] *Sears, Roebuck & Co.* v. *EEOC*, 581 F.2d 941 (D.C. Cir. 1978); *Burlington Northern, Inc.* v. *EEOC* 582 F.2d 1097 (7th Cir. 1978), *cert. denied*, 440 U.S. 930 (1979); *EEOC* v. *Associated Dry Goods Corp.*, 607 F.2d 1075 (4th Cir. 1979), *cert granted*, ____ *U.S.* ____ *(1980)*.

no statutory or case law authority supporting Respondent's argument, the Commission must deny it.

5. In Section VI Respondent again requests advance payment for any expenses necessary for responding to the subpoena. In his Determination, the District Director stated that the "Commission is authorized to contribute toward the costs of compliance and will make arrangements to do so when these expenses become less speculative." Nowhere, in Sections IV and V, or elsewhere in its Appeal, does Respondent itemize its actual expenses. The Commission remains open to working out details of Respondent's expenses.

Further, Respondent relies on Rule 45(b)[4] of the Federal Rules of Civil Procedure in support of its argument that the Commission cannot require Respondent to respond to the subpoena before advance payments are received. Respondent's assertion that Rule 45(b) "requires" advancement ignores the language of the Rule, which clearly gives the court discretion to decide such an issue.

The decision cited by Respondent in support of its erroneous position, *New Orleans Public Service Commission* v. *Brown*, 507 F.2d 160, 165 (5th cir. 1975, does not even deal with the issue of advance payments. Rather, every holding in that decision supports the Commission's position with respect to the validity of this subpoena. Accordingly, the Respondent's argument fails.

6. Finally, Respondent repeats its earlier argument that the subpoena should be limited to the time period for which actionable Title VII violations could concievably be found. In support of its argument, Respondent propounds the theory that background information (i.e., evidence of discrimination before the time limitations of the action), while relevant to a legal action in court, has no value whatsoever in an administrative investigation. Respondent's reasoning

[4] The relevant portion of Rule 45(b) is as follows:

> "[T]he court, upon motion made promptly . . .; may . . . (2) condition denial or the motion upon the advancement by the person in whose behalf of subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things."

is that "If reasonable cause cannot be discerned from actions and practices during the liability period, it cannot be supplied for prior occurrences."

Respondent's argument fails on two grounds. First of all, Respondent's assertion that such background information has no value whatsoever is controverted in Respondent's Appeal by its references to *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 553 (1977), which hold that evidence of discrimination occurring more than 180 days before the filing of a Title VII charge is relevant as background information. Whatever, a court would find relevant, certainly EEOC would also, and this is the basis upon which a request for material in an investigation is determined to be valid or invalid.

Also, in any event it is the Commission, not the party being investigated, that must determine what material is relevant to the investigation and to the finding of reasonable cause. *EEOC* v. *University of New Mexico*, 504 F.2d 1296 (10th Cir. 1974); *Pacific Maritime Association* v. *Quinn*, 491 F.2d 1294 (9th Cir. 1974). Accordingly, Respondent's argument must fail.

## DETERMINATION

Respondent's Appeal Petition is hereby denied. The subpoena is modified to the extent that the addressee therein is directed to apear before Terence W. Marlow, of the United States Equal Employment Opportunity Commission at 1601 Olive Street, St. Louis, Missouri 63103, on September 18, 1980 at 10 o'clock a.m. of that day, and at said time and place produce all the documents described in the subpoena.

On Behalf of the Commission

/S/ LEROY D. CLARK
LEROY D. CLARK
General Counsel

Date: AUGUST 9, 19____

**COMPLAINT**
**CIVIL NO. 90-1202C(5)**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Action No. 80-1202-C(5)

SHELL OIL COMPANY, PLAINTIFF,

*v.*

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

ELEANOR HOLMES NORTON
Chair, United States Equal Employment Opportunity Commission

LEROY CLARK
General Counsel, United States Equal Employment Opportunity Commission,

W. ED MANSFIELD
District Director, St. Louis District Office
United States Equal Employment Opportunity Commission, DEFENDANTS.

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## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

### INTRODUCTION

1. This is a civil action for declaratory and injunctive releif with respect to certain actions of the defendants in connection with a charge against plaintiff Shell Oil Company ("Shell") pursuant to Title VII of the 1964 Civil Rights Act and an investigative subpoena issued subsequent to that charge.

2. Shell asserts that the charge filed against it was initiated without lawful authority and as a result of arbitrary and capricious agency action; the charge does not reasonably afford plaintiff a basis to understand the relevance of the information demanded by the agency. Shell also asserts

that the subsequent investigative subpoena was invalidly issued and is unnecessarily and unreasonably burdensome. The subpoena also contravenes the terms of the Federal Reports Act. In addition, defendants have claimed the authority to disclose data covered by the subpoena to unnamed third parties in direct contravention of Title VII and the Trade Secrets Act. For these reasons, Shell seeks to have the subpoena quashed and the defendants enjoined from their unlawful and arbitrary course of conduct.

## JURISDICTION AND VENUE

3. Jurisdiction arises under the Fifth Amendment to the Constitution of the United States; the Declaratory Judgment Act (28 U.S.C. §§ 2201 *et seq.*); the Administrative Procedure Act (5 U.S.C. §§ 551 *et seq.*, 701 *et seq.*); the Federal Reports Act (44 U.S.C. §§ 3501 *et seq.*); the Trade Secrets Act (18 U.S.C. § 1905); and Sections 1331, 1337 and 1651 of Title 28 of the United States Code.

4. The matters in controversy arise under the laws of the United States and exceed the sum of ten thousand dollars, exclusive of interest and costs.

5. This action is properly brought in this Court under the provisions of 28 U.S.C. § 1391(e).

## PARTIES

6. Plaintiff Shell is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at One Shell Plaza, Houston, Texas. Shell is authorized to do business in the state of Missouri, where this action began with the issuance of a Commissioner's Charge and subsequent subpoena.

7. Defendant Equal Employment Opportunity Commission ("EEOC") is an administrative agency of the United States organized and existing pursuant to Title VII of the Civil Rights act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, with its principal office in Washington, D.C. Defendant Eleanor Holmes Norton is Chair and a Commissioner of EEOC. Defendant Leroy Clark is General Counsel of EEOC. Defendant W. Ed Mansfield is District Director of the St. Louis Missouri, District Office of EEOC. Defend-

ants Norton, Clark, and Mansfield are sued in their official capacities.

NATURE OF THE CONTROVERSY

8. On or about September 27, 1979, defendant Norton initiated a so-called "Commissioner's Charge" against Shell alleging employment discrimination on the basis of race and sex at Shell's refinery in Wood River, Illinois.

9. Defendant Norton's charge purported to be filed pursuant to section 706(b) of Title VII of the 1964 Civil Rights Act ("Title VII"), which requires, *inter alia*, that "the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice)" and that the charge "shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires."

10. Section 706(b) limits the scope of such charges to alleged instances of discrimination occurring within 180 days prior to the filing of the charge. Defendant Norton's charge did not specify the dates of any alleged discriminatory acts or practices nor was there any indication that the charge was timely as to the allegations therein.

11. The EEOC's regulations, 29 C.F.R. § 1601.12(a), provide that a charge should include "a clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices ...." Although the regulations, § 1601.12(b), provide that a charge is "sufficient" if the parties are identified and the practices complained of "[are] describe[d] generally" in writing, this latter provision was intended to protect the rights of unsophisticated charging parties.

12. Defendant Norton's charge consists of boiler-plate and conclusory allegations of discrimination against Shell, with no citation of any alleged specific incident or practice of discrimination and no identification of any pertinent date on which any alleged incident of discrimination occurred or any period during which discriminatory policies were in force.

13. At the time defendant Mansfield issued a subpoena based on defendant Norton's charge against Shell, defend-

ants were on notice, in their official capacities, of the following facts:

(a) Within the previous ten years only two charges of employment discrimination on the basis of race or sex had been filed with either the Illinois Fair Employment Practices Commission or the EEOC. Both charges were dismissed.

(b) No such charges at all had been filed within the previous five years.

(c) As of December 31, 1979, the Wood River Refinery employed 1,757 persons, of whom 126 were black and 131 were female. As of that date, therefore, blacks and females constituted 7.2 percent and 7.5 percent respectively of the total work force at the Wood River Refinery.

(d) Blacks and women constitute respectively 4.7 percent and 8.0 percent of the appropriate labor market for the Wood River Refinery.

(e) Of the employees working at the Wood River Refinery as of December 31, 1979 who had been employed by Shell since July 1965, the effective date of Title VII of the Civil Rights Act of 1964, 12.3 percent were black and 9.8 percent were female.

(f) For the period beginning more than two years before the filing of defendant Norton's charge, the hiring rate for blacks and females at the Wood River Refinery significantly exceeded their respective availabilities in the Wood River Refinery labor market. Promotion rates for the same period for blacks and females exceeded both the Wood River Refinery's internal work force representation and the external Wood River Refinery labor market availability figures.

(g) The increases in black and female representation in the Wood River Refinery work force occurred despite the fact that the total number of employees at the refinery declined by 23 percent over the ten years ending December 31, 1979.

14. Upon the filing of defendant Norton's charge, defendant EEOC served Shell with a Request for Information comprising 33 items and numerous sub-items. This Request for Information sought to require Shell to produce business

records and other documents, to make compilations and calculations of data, and to answer detailed interrogatories pertaining to the operation of the Wood River Refinery.

15. Compliance by Shell with EEOC's Request for Information would have been a costly and burdensome procedure that would have interfered with management and operations at Snell's Wood River Refinery.

16. On November 28, 1979, Shell's representatives met with EEOC respresentatives at the St. Louis District Office to ask the basis, if any, upon which defendant Norton's charge had been filed against Shell. The EEOC representatives declined to provide any detailed information or allegations to support the issuance of a commissioner's charge.

17. By letter of March 7, 1980, Shell furnished defendant Mansfield with detailed information, including the facts outlined in Paragraph 13 of this Complaint, showing that Commissioner Norton's charge was wholly unjustified. The letter again requested that defendants provide Shell with detailed information or allegations to support the issuance of defendant Norton's charge and to permit Shell's efficient and economical development of a response to the Request for Information.

18. EEOC responded by letter of April 11, 1980, signed by Ernestine C. Thomas, a subordinate of defendant Mansfield in EEOC's St. Louis Disrict Office. By that letter, EEOC refused to provide Shell with the information it had requested, and instead demanded that Shell provide EEOC with additional information on its employment practices, as detailed in the Request for Information.

19. Shell responded by letter of April 28, 1980. The letter contrasted EEOC's failure to address adequately Shell's inquiries regarding defendants' charge and Request for Information with Shell's record of attempted cooperation in the matter. The letter reiterated several of Shell's concerns, including EEOC's use of a standard form questionnaire not approved by the Office of Management and Budget pursuant to the Federal Reports Act. However, Shell expressed its willingness to discuss the Request for Information further with EEOC.

20. On May 16, 1980, defendant Mansfield caused the service of an administrative Subpoena on Shell. The Subpoena demanded that Shell provide substantially the same records and data as were sought in EEOC's previous Request for Information dated October 26, 1979.

21. On May 23, 1980, Shell timely filed a Petition to Revoke or Modify Subpoena addressed to defendant Mansfield.

22. On June 9, 1980, defendant Mansfield denied Shell's Petition to Revoke or Modify Subpoena.

23. On June 23, 1980, Shell timely filed an Appeal of Petition to Revoke or Modify Subpoena addressed to defendant Clark, with a copy served on defendant Mansfield.

24. On August 27, 1980, on behalf of EEOC, defendant Clark issued a Determination denying Shell's Appeal of Petition to Revoke or Modify Subpoena. Defendant Clark's Determination constituted final agency action with respect to Shell's efforts to obtain releif from EEOC's demands for information and documents.

COUNT I

25. Shell repeats and realleges each and every allegation contained in Paragraphs 1 through 24 of this Complaint with the same force and effect as if fully set forth herein.

26. Defendant Norton filed her charge without any basis in fact for the conclusory allegations made. No specific alleged act or practice of discrimination is described therein, nor is the date of such act or practice given. The charge does not purport to allege any violation of Title VII within the statutory time period set forth in Section 706(b) of the Act.

27. Defendant Norton's charge was initiated, processed, and investigated without compliance, on her part or on the part of EEOC, with the statutory requirements of Section 706 of Title VII, or with the procedural requirements of EEOC's regulations.

28. The initiation of a commissioner's charge by defendant Norton, and the processing and investigation of such a charge by EEOC, constitute arbitrary and capricious agency action, in excess of the EEOC's statutory authority,

without any substantial basis in fact, and a denial of Shell's right to due process of law.

29. Shell has suffered and continues to suffer harm as a result of the unlawful initiation, processing, and investigation of defendant Norton's charge. In addition, because EEOC has refused to provide Shell with any specific allegations in support of the charge, Shell has been and is being denied its due process right to defend itself against the conclusory allegations contained in the charge. Shell has exhausted its administrative remedies and has no adequate remedy at law for the substantial, immediate, and irreparable harm it has suffered and continues to suffer.

COUNT II

30. Shell repeats and realleges each and every allegation contained in paragraphs 1 through 29 of this Complaint with the same force and effect as if fully set forth herein.

31. The administrative Subpoena issued by defendant Mansfield demands that Shell provide numerous documents and other information, including compilations of data, to EEOC. Compliance with the Subpoena would be extremely costly and burdensome to Shell and would substantially interfere with management and operations at its Wood River Refinery.

32. Since the charge filed by defendant Norton contains no specific allegations of discriminatory acts or practices by Shell, defendants have not shown, and cannot show, that the information and documents demanded by the Subpoena relate in any way to subject matter of defendant Norton's charge.

33. The issuance of the Subpoena by defendant Mansfield, the denial of Shell's Petition to Revoke or Modify Subpoena by defendant Mansfield, and the denial of Shell's Appeal of Petition to Revoke or Modify Subpoena by defendant Clark, alone and in combination, constituted arbitrary and capricious agency action, in excess of EEOC's statutory authority, without any substantial basis in fact, and a denial of Shell's right to due process of law.

34. Shell has exhausted its administrative remedies. Unless the Subpoena is quashed, Shell will suffer substantial,

immediate, and irreparable harm and a denial of its due process rights, for which it has no adequate remedy at law.

COUNT III

35. Shell repeats and realleges each and every allegation contained in paragraphs 1-34 of this Complaint with the same force and effect as if fully set forth herein.

36. The Administrative Subpoena issued by defendant Mansfield demands that Shell provide data going back to January 1, 1976.

37. In an investigation by EEOC pursuant to Title VII, discrimination and allegations thereof occurring more than 180 days before the filing of a charge are relevant, if at all, merely as background information.

38. because the conclusory charge filed by defendant Norton contains no specific allegation that Shell committed discriminatory acts or practices within (or before) the 180-day period prior to filing of the charge, the information sought in the Subpoena concerning events occurring more than 180 days prior to the filing is not relevant.

39. Unless the Subpoena is quashed, Shell will suffer irreparable harm as a result of EEOC's demand that it provide information going back to January 1, 1976. If Shell must provide this information to EEOC, it will be unable to protect itself against defendant Norton's charge without incurring unwarranted costs in time, labor and money. Shell has no adequate remedly at law to prevent this threatened harm.

COUNT IV

40. Shell repeats and realleges each and every allegation contained in paragraphs 1 through 39 of this Complaint with the same force and effect as if fully set forth herein.

41. EEOC is a Federal Agency as defined by the Federal Reports act, 44 U.S.C. § 3502.

42. On information and belief, plaintiff alleges that EEOC has requested from 10 or more persons, including Shell, information identical or substantially identical to that sought by it in the Request for Information dated October 26, 1979, and again sought in the Subpoena issued by defendant Mansfield on May 15, 1980.

43. On information and belief, plaintiff alleges that EEOC has failed to submit to the Director of the Office of Management and Budget ("OMB") its Request for Information form dated October 26, 1979 or a substantially identical form, for the purpose of obtaining a statement from the director that he does not disapprove of the proposed collection of information. The failure by EEOC to obtain such a document from the Director of OMB is a violation of Section 3509 of the Federal Reports Act, as amended, 44 U.S.C. § 3509.

44. Shell has suffered harm and continues to suffer harm as a result of EEOC's failure to comply with Section 3509 of the Federal Reports Act, and has been subject to arbitrary, capricious, and unlawful Agency action as a result thereof. Because defendants have failed to comply with Section 3512 of the Federal Reports act, Shell is unable to protect itself against defendant Norton's charge without incurring excessive costs in time, labor, and money in order to respond to defendants' burdensome demands for information. Shell has no adequate remedy at law for the harm it has suffered and continues to suffer as a result of defendants' actions.

COUNT V

45. Shell repeats and realleges each and every allegation contained in Paragraphs 1 through 44 of this Complaint with the same force and effect as if fully set forth herein.

46. EEOC is an independent federal regulatory agency as defined by the Federal Reports Act, 44 U.S.C. § 3502.

47. Defendants have failed to submit to the Comptroller General of the United States their Request for Information form dated October 26, 1979, or a substantially identical form, for the Comptroller General's approval.

48. Defendants' failure to obtain such approval from the Comptroller General is a violation of Section 3512 of the Federal Reports Act.

49. Shell has suffered harm and continues to suffer harm as a result of defendants' failure to comply with Section 3512 of the Federal Reports Act and has been subject to arbitrary, capricious, and unlawful agency action as a result

thereof. Because defendants have failed to comply with Section 3512 of the Federal Reports act, Shell is unable to protect itself against defendant Norton's charge without incurring excessive costs in time, labor, and money in order to respond to defendants' burdensome demands for information. Shell has no adequate remedy at law for the harm it has suffered and continues to suffer as a result of defendants' actions.

COUNT VI

50. Shell repeats and realleges each and every allegation contained in Paragraphs 1 through 49 of this Complaint with the same force and effect as if fully set forth herein.

51. EEOC frequently retains outside consultants to review investigatory materials, particularly computer data. In so doing, EEOC provides such consultants with a charged employer's company documents and computer records.

52. This practice violates Sections 706(b) and 709(e) of Title VII, 42 U.S.C. §§ 2000e-5(b) and 2000e-8(e), and EEOC's regulations pursuant thereto. In addition it violates the Trade Secrets Act, 18 U.S.C. § 1905.

53. EEOC has refused to give Shell any assurance that it will not provide the information demanded from Shell to outside consultants, and has in fact asserted a right to do so.

54. Shell will suffer serious and irreparable harm by reason of the practices described in this Count unless the Subpoena issued by defendant Mansfield is quashed. If Shell were to provide documents and information to defendants pursuant to the Subpoena, and such information were subsequently revealed by EEOC to outside consultants, there is a substantial danger that Shell's competitors and the general public would be given access to highly confidential business information and personnel data which could be utilized to damage Shell's business. Shell has no adequate remedy at law to prevent this threatened harm.

COUNT VII

55. Shell repeats and realleges each and every allegation contained in Paragraphs 1 through 54 of this Complaint with the same force and effect as if fully set forth herein.

56. The Subpoena issued by defendant Mansfield requires Shell to provide compilations or summaries to the extent that they "can be produced through computer or other mechanical sources available to the respondent to produce such materials." Thus, the Subpoena requires Shell to utilize its computer resources to create documents and summaries.

57. Creation of documents and summaries by use of its computer resources constitutes a time-consuming and costly burden upon Shell by displacing other essential projects requiring use of those same resources. The requirement that Shell undertake this burden for defendants is inconsistent with Title VII and with the subpoena authority to EEOC under Title VII.

58. Unless the Subpoena is quashed, Shell will suffer irreparable harm as a result of the demand that it compile and produce new data and information in response to the subpoena. If Shell must provide compilations and summaries to EEOC in order to comply with its subpoena, Shell will be unable to protect itself against defendant Norton's charge without incurring excessive costs in time, labor, and money in order to respond to the Subpoena. Shell has no adequate remedy at law to prevent this threatened harm.

## COUNT VIII

59. Shell repeats and realleges each and every allegation contained in paragraphs 1 through 58 of this Complaint with the same force and effect as if fully set forth herein.

60. The Subpoena issued by defendant Mansfield seeks information regarding Shell's computer files and computer capability. This information is apparently sought as background information on which to base a further demand by defendants that Shell compile information for EEOC by use of its computer capability.

61. Requests for information designed to learn about computer capability so that EEOC can demand that compilations and summaries be provided by use of that computer

capability are inconsistent with Title VII of the subpoena authority of EEOC under Title VII.

62. Unless the Subpoena is quashed, Shell will suffer irreparable harm as a result of the demand that it provide information as to its computer capabilities. If Shell must provide information regarding its computer capability in order to comply with EEOC's subpoena, it will be unable to protect itself against defendant Norton's charge without incurring excessive costs in time, labor and money in order to respond to defendants' further requests for compilations and summaries. Shell has no adequate remedy at law to prevent this threatened harm.

WHEREFORE, Shell prays that this Court:

1. Declare that defendant Norton's charge has been filed, processed, and investigated in an arbitrary and capricious manner, without statutory authority or any substantial basis in fact, and in derogation of Shell's due process rights.

2. Declare that the issuance of the Subpoena by defendant Mansfield, the denial of Shell's Petition to Revoke or Modify Subpoena by defendant Mansfield, and the denial of Shell's Appeal of Petition to Revoke or Modify Subpoena by defendant Clark, alone and in combination, constituted arbitrary and capricious agency action, in excess of EEOC's statutory authority, without any substantial basis in fact, and in derogation of Shell's due process rights.

3. Declare that defendants have no authority to require Shell to provide information concerning events occurring more than 180 days prior to the filing of defendant Norton's charge.

4. Declare that defendants violated Section 3509 of the Federal Reports Act because they failed to submit the Request for Information form upon which the Subpoena was based to the Director of OMB for his approval.

5. Declare that defendants violated Section 3512 of the Federal Reports Act because they failed to submit the Request for Information form upon which the Subpoena was based to the Comptroller General of the United States for his approval.

6. Declare that EEOC's practice of providing materials obtained by it during investigations to outside contractors violates Sections 706(b) and 709(e) of Title VII and also violates the Trade Secrets Act.

7. Declare that defendants lack authority by statute or regulation to require Shell to provide computer compilations and summaries, or information concerning its computer capabilities, in response to defendants' Subpoena.

8. Enjoin defendants permanently from each of the following actions and courses of conduct:

(a) Further processing or investigation of defendant Norton's charge;

(b) Further enforcement of the Subpoena issued by defendant Mansfield;

(c) Further enforcement of the Subpoena issued by defendant Mansfield as to all items demanding the provision of information concerning events occurring more than 180 days prior to the filing of defendant Norton's charge;

(d) Continuing violations of Section 3509 and 3512 of the Federal Reports Act;

(e) Continuing violations of Section 706(b) and 709(e) of Title VII, end of the Trade Secrets Act;

(f) Further enforcement of the Subpoena issued by defendant Mansfield as to all items demanding computer compilations or summaries, or descriptions of Shell's computer capabilities;

9. Grant Shell reasonable attorneys' fees and litigation costs incurred in this action, and such other and further relief as appears to this Court to be just and proper.

Respectfully submitted,

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Dated: SEPTEMBER 18, 1980

# In the Supreme Court of the United States

No. 82-825

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PETITIONER,

*v.*

SHELL OIL COMPANY

ORDER ALLOWING CERTIORARI. Filed February 22, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.